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REPORTER'S RECORD

VOLUME 38 OF 57 VOLUMES

TRIAL COURT CAUSE NO. F12-23749-W

COURT OF CRIMINAL APPEALS NUMBER: AP-77,030

THE STATE OF TEXAS	:	IN THE 363RD JUDICIAL
VS.	:	DISTRICT COURT OF
MATTHEW LEE JOHNSON	:	DALLAS COUNTY, TEXAS

**INDIVIDUAL VOIR DIRE**

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On the 18th day of September, 2013, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Tracy Holmes, Judge Presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand computer assisted transcription.

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1 P R O C E E D I N G S

2 THE BAILIFF: All rise.

3 (Venireperson brought into courtroom.)

4 THE COURT: Good morning, Ms. Salazar.

5 VENIREPERSON: Good morning.

6 THE COURT: How are you?

7 VENIREPERSON: Good. How are you?

8 THE COURT: Ms. Salazar -- oh, please be seated,  
9 everyone.

10 Do you remember being downstairs in the Central  
11 Jury Room of this building in June and me swearing you in?

12 VENIREPERSON: Yes.

13 THE COURT: All right. Well, you're still  
14 operating under that oath, and you will be until you're  
15 discharged from service.

16 VENIREPERSON: Okay.

17 THE COURT: We're going to try this case in  
18 October -- October the 28th -- the week of October the 28th  
19 through November the 8th. That's two weeks. Has anything  
20 happened between June and now that would prevent you from  
21 sitting during those two weeks this fall?

22 VENIREPERSON: No.

23 THE COURT: All right. Have you had any  
24 exposure to any of the facts of this case, or do you know  
25 anything about it?

1 VENIREPERSON: No.

2 THE COURT: Thank you very much. I'm going to  
3 introduce everyone to you. I'm Tracy Holmes. I'm the  
4 presiding Judge, and I'll sitting for the trial.

5 Sitting between us is Darline LaBar. She's the  
6 official court reporter, and she's taking down everything  
7 that's being said. As a courtesy to her, I'd appreciate it if  
8 you answer out audibly yes or no. She can't really take down  
9 nods and shakes of the head or uh-huh or huh-uh. So if you'll  
10 remember to do that, and the lawyers will help you with that.

11 Sitting at the State's table is Andrea Moseley.

12 MS. MOSELEY: Good morning.

13 THE COURT: And Elaine Evans.

14 MS. EVANS: Good morning.

15 VENIREPERSON: Good morning.

16 THE COURT: And at the Defense table is Kenneth  
17 Weatherspoon.

18 MR. WEATHERSPOON: Good morning.

19 VENIREPERSON: Good morning.

20 THE COURT: Catherine Bernhard.

21 MS. BERNHARD: Good morning.

22 VENIREPERSON: Good morning.

23 THE COURT: And Nancy Mulder.

24 MS. MULDER: Good morning.

25 VENIREPERSON: Good morning.

1 THE COURT: And the gentleman to the far left is  
2 the citizen accused, that's Mr. Matthew Lee Johnson.

3 THE DEFENDANT: Good morning.

4 VENIREPERSON: Good morning.

5 THE COURT: The lawyers are going to get 45  
6 minutes to talk to you -- each side has 45 minutes, and at that  
7 point we will determine whether you've been qualified as a  
8 potential juror. And if that's the case, then we'll be calling  
9 you on October the 15th to tell you whether you are, in fact, a  
10 juror in this case or not. Is that enough time for you to get  
11 your affairs in order?

12 VENIREPERSON: Yes.

13 THE COURT: All right. You've had a chance to  
14 review the pamphlet and the questionnaire.

15 VENIREPERSON: Yes, ma'am.

16 THE COURT: Thank you very much.  
17 Please proceed.

18 MS. MOSELEY: Thank you, Judge.

19 CHRISTINA SALAZAR,  
20 was called as a venireperson by the parties, and after having  
21 been first duly sworn, testified as follows:

22 STATE VOIR DIRE EXAMINATION

23 BY MS. MOSELEY:

24 Q. First, let me start by telling you -- I -- I see  
25 you're nervous this morning. And I -- I -- and everybody is.

1 Understand there's not going to be any right or wrong answers  
2 today. I know it's easy for me to say, don't be nervous, but  
3 really today is just about exploring some of the things you put  
4 in your questionnaire. It gives us an opportunity to explain  
5 the law to you, but most importantly, this is your opportunity  
6 to tell us if there's any reason that you feel you cannot sit  
7 as a juror in a case where the death penalty is a potential  
8 outcome, or any other reason you feel like you couldn't be fair  
9 and impartial and give both sides, the State and the Defense, a  
10 fair trial in this case.

11           The law recognizes that death penalty cases  
12 aren't really the types of cases that all citizens could sit on  
13 and be a fair juror. We know we've got people that come down  
14 here who say, you know what, if you show me that someone  
15 intentionally killed another person, not in self-defense, not a  
16 mistake, not an accident, then I'm always going to always say  
17 that the death penalty is the outcome. I'm going to do  
18 whatever it takes to get to the death penalty. Those people  
19 obviously are not going to be able to be fair to the Defendant  
20 because they have such strong feelings about the death penalty  
21 in favor of it.

22           We also have jurors that come down and tell us  
23 that because of personal issues in their background or their  
24 religious beliefs or their moral beliefs, they could never  
25 return a verdict that resulted in someone's execution because

1 they just flat don't believe in the death penalty, don't think  
2 we should have it, and could never do that. Obviously, those  
3 jurors aren't qualified because they wouldn't be able to give  
4 the State a fair trial. Does that make sense?

5 A. Yes.

6 Q. So what we're really looking for is jurors to come  
7 in like yourself and just be honest with us about how you feel.  
8 You're the only one who knows whether you can participate in  
9 this process without doing harm to your conscience. And the  
10 State's never going to put anybody or force anybody to serve on  
11 a jury if the result of their service would hurt their  
12 conscience going forward. So -- so we recognize that, and  
13 that's -- this is the only kind of case that jurors get an  
14 opportunity or prospective jurors get an opportunity to come  
15 down and spend an hour and a half of good quality time with us.  
16 So that's kind of the process. I know it's nerve racking  
17 sitting in that chair and everybody looking at you, but it's  
18 not a pop quiz. It's not a test. And nobody is going to say  
19 she's a good citizen or she's not a good citizen based on this  
20 process. So the only obligation you have today is to tell us  
21 the truth about how you feel.

22 And just so you understand where we're at in the  
23 process, the Judge told you we're trying to qualify jurors to  
24 sit on the case. And the decision has been made by my boss,  
25 Craig Watkins, to seek the death penalty in this case. So



1 we're not still talking about it or thinking or contemplating.  
2 That decision has been made, and I tell you that because  
3 sometimes it's easy to sit at home and you've told us, you  
4 know, if it's found the Defendant's guilty and a crime against  
5 a child or an elderly person, especially the punishment should  
6 fit the crime. And it's easy for us to feel that way when  
7 we're talking in the abstract and sitting at home. We see news  
8 stories, and we go, that guy deserves it or, that guy doesn't.  
9 But I want to make sure you understand that what we're talking  
10 about is not that guy you see on TV. It's the man sitting down  
11 at the end of this table, Matthew Johnson. And he has a family  
12 that cares about him like you and I do. He puts his pants on  
13 one leg at a time every day just like you and I do. And we  
14 believe -- the State of Texas believes that we have the  
15 evidence that will convince a jury, following their oaths, to  
16 find him guilty of capital murder.

17           We also believe that we have the kind of  
18 evidence, the quality and quantity of evidence, that will  
19 convince a jury that he is more likely than not going to be a  
20 continuing threat to society. We also believe that after  
21 hearing all of the evidence, the jury will answer Special Issue  
22 Number 2 no, that there isn't anything in the evidence that  
23 would support a life sentence over a death sentence. And that  
24 the result of that evidence and the result of the jurors'  
25 answers in that would be that Matthew Lee Johnson one day would

1 receive lethal injection.

2           The Judge is bound by the jury's answers, and  
3 that some day you may be sitting at home with your family  
4 watching the news and see -- come across the 6 o'clock news  
5 that today is the day Matthew Lee Johnson is going to be  
6 executed. And if you're on this jury, you will know that you  
7 played a part in that result, that but for your answers, that  
8 wouldn't be happening. And I don't tell you that to be morbid  
9 or gruesome or to make you nervous, but I want you to recognize  
10 that what we're talking about is a very real process. And I  
11 tell you that to ask you whether feel like you could  
12 participate in that process, knowing that his execution may be  
13 the result. Do you believe you could participate in that  
14 process without harming your conscience?

15           A.     I believe so.

16           Q.     And base your verdict on the evidence that you hear  
17 in the case?

18           A.     Yes.

19           Q.     One of the things that I noticed in your  
20 questionnaire is that you told us that you -- you are Catholic.

21           A.     Yes.

22           Q.     And I know from talking to prospective jurors, that  
23 the Catholic church may have a position. Do you know if they  
24 have a position on the death penalty, one way or the other?

25           A.     I do not.

1 Q. Okay. Some people who are Catholic tell us they  
2 can't participate, and others say they can. You're telling me  
3 that if the evidence leads you down that path, you could -- you  
4 could assess a death sentence?

5 A. Yes.

6 Q. Okay. And you'll have to keep your voice up.

7 A. I'm sorry.

8 Q. I can already see Darline leaning in.

9 Then I want to talk to you about a couple of  
10 things in your questionnaire before we start explaining the  
11 process to you. On page 2, Question Number 4, we asked you if  
12 you had any moral, religious, or personal beliefs that prevent  
13 you from sitting in judgement of another human being. And  
14 really, what we're getting at there is some jurors tell us they  
15 can't sit on a criminal jury because they would feel like they  
16 were judging someone and that that's not in their nature to do.  
17 You said: Every human being should have some beliefs which  
18 would prevent them from judging another, but you feel it's your  
19 duty as a citizens to serve on a jury. Tell me -- tell me  
20 where you're coming from there.

21 A. Well, I just think as a U.S. citizen, that's our  
22 duty. If not, then everybody would just go crazy on judgement  
23 and just start hanging everyone. It's our duty to make sure  
24 it's -- I mean, we have court systems and the -- and rules for  
25 a reason, and it's -- in order -- and to be part of -- be a

1 U.S. citizen, that's part of our duty. I just -- I just have a  
2 lot of family who's not -- who aren't U.S. citizens. And when  
3 they become one, it's such a pride to them, so we don't take  
4 that lightly in my family.

5 Q. Okay. So despite your reservations about sitting in  
6 judgement, you would be able to listen to the evidence in a  
7 case and if the evidence led you to a guilty verdict, you  
8 could -- you could -- you hate to sit in judgement. You're  
9 basically just following the evidence and the law where it  
10 leads you.

11 A. Right. I mean, if I was in that situation, I would  
12 want to be -- not that I'm in any means perfect, but I would  
13 want somebody like me to -- to -- if I was in that situation,  
14 to -- to have an open mind and to listen to everything.

15 Q. If you're a victim or the Defendant?

16 A. Right. Correct.

17 Q. Because you recognize that the State also is  
18 entitled to a fair trial --

19 A. Correct.

20 Q. -- and 12 jurors.

21 On page 3, Question Number 13, we kind of talk  
22 to you about circumstantial evidence, and I want to make sure  
23 that you understand where we're going there. The law doesn't  
24 tell the State what kind of evidence we have to have to get a  
25 jury to convict someone. It doesn't say you have to have at

1 least two eyewitnesses. It doesn't say you have to have two  
2 eyewitnesses and DNA. It really is left up to the jury to  
3 decide what evidence convinces them beyond a reasonable doubt.  
4 And the law is -- even in a capital murder case, if one single  
5 witness took the witness stand and the jury believed that  
6 witness was telling the truth and believed they were correct  
7 and believed that that one witness convinced them beyond a  
8 reasonable doubt of the Defendant's guilt, they would have to  
9 return a verdict of guilty.

10           The same is true if there is no eyewitness. If  
11 all we have is -- and we call it circumstantial evidence. That  
12 kind of has a bad connotation. People think, oh, that's a weak  
13 case, it's just circumstantial. And I'll tell you whether it's  
14 DNA -- DNA is circumstantial evidence, fingerprints, you know,  
15 anything other than eyewitness testimony is circumstantial. So  
16 if all we had was circumstantial evidence and no eyewitnesses,  
17 the jury's responsibility would be the same, to look at the  
18 evidence and decide if it convinced them of the Defendant's  
19 guilt beyond a reasonable doubt.

20           A.     Okay.

21           Q.     So whatever evidence is brought to the jury, if  
22 they're convinced beyond a reasonable doubt, the verdict is  
23 guilty. And if they're not -- even if there's 42 eyewitnesses,  
24 and DNA and fingerprints, if that doesn't convince them beyond  
25 a reasonable doubt, the verdict would be not guilty.

1 A. (Nods head up and down.)

2 Q. Could -- could you follow that law and not require  
3 any specific type of evidence before you could convict?

4 A. Yes, ma'am.

5 Q. Okay. Okay. You said no here, and I -- the -- I  
6 think the question --

7 A. Yeah, I didn't understand that question. I was  
8 rereading it, I'm like, yeah, that didn't make sense.

9 Q. I think it's just worded poorly. So that doesn't  
10 cause you any concern now, having had it explained?

11 A. No.

12 Q. You said that -- on Question 7 that you believe  
13 serving a lifetime in prison is more severe than a death  
14 penalty. Tell me why. Where are you coming from?

15 A. That's my opinion. I wouldn't want to be somewhere  
16 for a long period of time and I can't go anywhere else. I  
17 can't even do a Carnival cruise ship, so, no, I can't do that.

18 Q. That's just for you personally?

19 A. That's just my opinion, my -- yes.

20 Q. Okay. For you personally a life sentence --

21 A. Correct.

22 Q. On page 5, Question Number 30, we asked you about  
23 the first thing that comes to your mind when you think about  
24 police officers. You said tickets. Very common. For  
25 prosecutors, you said, I should have gone to law school.

1 What --

2 A. I -- I was -- when I would -- you know, when I was  
3 growing up and even into college, I was indecisive, so I went  
4 to accounting. It's thrilling.

5 Q. You feel like that was something, like a  
6 prosecutor -- you thought you might be interested in doing?

7 A. Yeah, when I -- yeah, when I was -- so that's just  
8 always what I think of.

9 Q. Okay. And billboards, I guess, because they're --  
10 they have the signs that say tickets, call me or --

11 A. Yeah.

12 Q. I want to talk a little bit about your sister's drug  
13 addiction -- your younger sister, right?

14 A. Yes.

15 Q. Is she still addicted to drugs now, or is she  
16 struggling with it? Where is she?

17 A. I believe she's off drugs. I haven't talked to her  
18 in -- I mean, we'll go six months without talking to each other  
19 and then whenever she needs anything, she'll call me. But from  
20 what I hear, she's off drugs and just drinking, so --

21 Q. Okay. So obviously, it has caused a -- I don't want  
22 to say a rift, but some difficulties in your relationship with  
23 your sister?

24 A. Not -- not -- I wouldn't say difficulties. I mean,  
25 with my -- seeing what my mother goes through, yes, but --

1 because that -- you know, that's her daughter. With me, it's  
2 easier for me to separate because I just don't have tolerance  
3 for -- you know, after so many times of helping someone, you  
4 just have to step back and just separate yourself from the  
5 situation. And that's what I've done. And she knows that.  
6 And the only time she does call me is -- she knows -- she's --  
7 even if she were to ask, I -- she knows I will not give her  
8 anything, because I don't know where that money is going or  
9 I -- you know, if she's hungry, I'll buy her food, but I won't  
10 give her money. And so she knows that and so -- which is why  
11 we -- she -- we rarely talk.

12 Q. Okay. On page 10, we asked some questions related  
13 to drug and alcohol abuse and addiction and intoxication. And  
14 I want to explain kind of where the law is coming from on this  
15 issue. We know that drugs and alcohol are a big problem in our  
16 community, and frankly, across the country. And we know that  
17 people's lives are affected by it, whether personally or like  
18 you through a family member. So we take the time to delve into  
19 that.

20 On Question Number 64, that's the first thing I  
21 want to explain. I under -- I guess you didn't understand what  
22 we were saying. The law says that if you go out and get  
23 yourself high on drugs or intoxicated with alcohol voluntarily,  
24 meaning you made the choice to drink or made the choice to use  
25 the drugs, that that is not going to be a defense to the



1 commission of a crime. So if you get high or drunk and you go  
2 commit a crime, you can't come into court and say, well, I was  
3 high, I was drunk, I didn't know what I was doing, therefore,  
4 I'm not guilty. Does that make sense?

5 A. Yes.

6 Q. Do you agree that that should be the law?

7 A. Yes.

8 Q. And Question 65, we told you that -- that evidence  
9 of intoxication, I was drunk or I was high during the crime,  
10 may be considered in the punishment phase of the trial. So  
11 while it's not a defense to the crime, you're still guilty, you  
12 would be found guilty. In the punishment phase, the jury may  
13 be able to consider that evidence and decide are we looking at  
14 a minimum kind of punishment or a maximum kind of punishment.  
15 And in a case where it's a capital murder, where the State is  
16 seeking the death penalty, they may be able to consider that as  
17 it relates to Special Issue Number 1 or Special Issue Number 2.

18 Nobody is going to tell a juror or a jury that  
19 evidence of intoxication is something that should lessen  
20 responsibility. Some jurors tell us that, if I hear that a  
21 person was intoxicated at the time they committed a crime, I  
22 will think they're less responsible for the crime. Others will  
23 tell us, I think they're more responsible because now they've  
24 made two bad decisions. They made the decision to get high,  
25 and they made the decision to commit the crime. So every juror

1 would maybe look at it differently, but the law says that if  
2 it's in the evidence, the jury would have to consider the --  
3 the evidence and then decide what, if anything, it means to  
4 them in terms of the proper punishment. Does that make sense?

5 A. Yes, ma'am.

6 Q. So that's what we're talking about in Question 65,  
7 and the question I have for you now that we've explained it is  
8 would you consider the evidence, if it was in evidence, and  
9 then decide how it -- how it weighed in your judgement?

10 A. Yes, ma'am.

11 Q. Okay. In other words, your mind isn't closed off to  
12 the -- to the evidence?

13 A. No, ma'am.

14 Q. Okay. And in Question Number 66, following up on  
15 that, we -- we asked: Would a person's use of drugs or alcohol  
16 at the time of the offense automatically prevent from you  
17 assessing the death penalty if you found him guilty of capital  
18 murder? You said: Yes, drugs and alcohol affect the mind and  
19 decisions.

20 Let me first explain to you what the law is  
21 about that. As -- and we'll get more into the details of the  
22 process. But anytime you hear the word "automatically," it  
23 should raise a red flag in your mind because this is very much  
24 a process. And what the law is going to set out in a capital  
25 murder case is that everything has to be weighed. Everything

1 has to be considered and then weighed. But we do have jurors  
2 that tell us because of their background, that if I hear  
3 somebody was intoxicated at the time they committed a capital  
4 murder, I'm never going to assess the death penalty, in any  
5 case. It doesn't matter what other evidence there is, that's  
6 something that is automatically going to cause me to assess a  
7 life sentence.

8 That -- and that would not be the proper answer  
9 under the law, but it would be the proper answer if it was the  
10 truth about how you felt. Does that make sense?

11 A. Yes, ma'am.

12 Q. So I've explained to you that under the law, you  
13 can't automatically go one way or the other if you're a juror.  
14 How do you feel about that?

15 A. Well, I think that with having my sister involved --  
16 or in my -- you know, with her experiences and her past,  
17 everything has a consequence, so -- and I guess I have the same  
18 as I do with her. If you -- whether or not you're on drugs or  
19 alcohol or whatever you're doing out there and you do  
20 something, there's a consequence.

21 Q. Uh-huh.

22 A. And every -- you have to answer to those  
23 consequences.

24 Q. Okay.

25 A. So --

1 Q. So I guess what I'm hearing -- and correct me if I'm  
2 wrong -- that's not -- evidence of intoxication at the time of  
3 the crime isn't something that would cause you automatically --

4 A. No.

5 Q. -- to answer life or answer death?

6 A. No, ma'am. No.

7 Q. Okay. You'd just consider everything and weigh it?

8 A. Most definitely.

9 Q. Okay. Because you told us in the questionnaire you  
10 would automatically go for life, not death?

11 A. Right. And I don't know if I understood that  
12 question, along with the other two up top. I apologize.

13 Q. Okay. And that's why -- that's why we talk to you.  
14 That's why we don't just put people on the jury on the  
15 questionnaire because we know it's confusing.

16 Then let's talk some about the process. In any  
17 criminal case -- you talked about, you know, your duty as a  
18 U.S. citizen, and there are principles of law that you're  
19 familiar with, I'm sure, that apply in any criminal case. A  
20 person is presumed innocent of the crime until the State and  
21 unless the State can prove their guilt beyond a reasonable  
22 doubt. That means as the Defendant sits in the courtroom  
23 today, even accused of capital murder, and even though you know  
24 the State has said they're seeking the death penalty, he is  
25 presumed to be innocent, because I haven't provided any

1 evidence. Do you agree with that?

2 A. I do.

3 Q. The burden of proof is on the State of Texas. That  
4 table over there, the Defense table, his lawyers, never have to  
5 do anything at all. My job is to prove somebody guilty. They  
6 don't have to prove he's innocent. And in the punishment phase  
7 after the jury has decided he's guilty, they don't have to  
8 prove that the life sentence is the proper sentence. I have to  
9 prove that the death sentence is the proper sentence. So you  
10 always look to the prosecution -- to the State of Texas to  
11 bring the evidence. They don't have to ask any questions.  
12 They don't have to put on any witnesses. They don't have to  
13 make a closing argument. They don't have to make an opening  
14 statement. They don't even have to talk to you today if they  
15 don't want to. It's always my job because I've brought the  
16 charges, I have to prove it. Does that make sense?

17 A. Yes, ma'am.

18 Q. Do you think that's the way it should be?

19 A. If that's part of the law, yes. Yes, ma'am.

20 Q. Along with that is the Defendant's Fifth Amendment  
21 privilege which is that he doesn't ever have to testify. I  
22 can't call him to the stand. His own mamma can't say, you know  
23 what, you need to get up there and tell your story. It is  
24 always going to be the Defendant's decision and his decision  
25 alone. He may get help from his attorneys to make the

1 decision, but even if his lawyers say, you need to testify, it  
2 is his decision whether he does or doesn't.

3           And the jury would be instructed in any case  
4 where the Defendant chose not to testify, that they can't  
5 consider it for any reason at all. The jury would be  
6 instructed to look to the evidence they did hear and not  
7 consider whether the Defendant did or didn't testify. You  
8 can't say, well, you know, if I was accused of capital murder,  
9 I'd get up there and tell my story. So I think he must be  
10 guilty. And I see you shaking your head no. You understand  
11 that that is an absolute privilege accorded him?

12           A.     Most definitely.

13           Q.     And he -- if he chooses not to testify, you wouldn't  
14 hold it against him?

15           A.     No, ma'am.

16           Q.     Always just look to the evidence you did hear and  
17 don't speculate about things you didn't or why you didn't.

18           A.     Correct.

19           Q.     That applies in the guilt/innocence phase, as well  
20 as in the punishment phase. A defendant is never going to have  
21 to take the witness stand and say, I won't be a continuing  
22 threat to society, I'm never going to commit another crime, I'm  
23 real sorry, I feel bad about what I did, please give me a life  
24 sentence. That's never going to be required of anybody. So  
25 you always just look to the evidence you did hear, and if he

1 doesn't testify, could you afford him that Fifth Amendment  
2 privilege and not consider it for any reason?

3 A. Of course. Yes, ma'am.

4 Q. I've told you that I have the burden of proof, and  
5 that burden is beyond a reasonable doubt. It is not beyond all  
6 possible doubt. It's not beyond a shadow of a doubt. It's the  
7 highest burden that we have in the law, and it should be  
8 because we're talking about taking someone's liberty and  
9 potentially their life. But it's never going to be a hundred  
10 percent proof because I would tell you, Ms. Salazar, that if I  
11 convinced you of something beyond all possible doubt, you're  
12 probably a witness to the crime. That's probably because you  
13 saw it yourself. There's always going to be some doubt, but we  
14 have to exclude all reasonable doubt.

15 If our burden is beyond a reasonable doubt,  
16 which I've told you it is, could you hold us to that burden?

17 A. Of course.

18 Q. And not require us to prove it beyond all possible  
19 doubt, but beyond a reasonable doubt?

20 A. Yes, ma'am.

21 Q. What we have to prove is everything we put in our  
22 indictment. I have to prove for capital murder -- and capital  
23 murder is the only crime for which the death penalty is  
24 available as a punishment. Capital murder is an intentional  
25 murder, intentionally causing another person's death. That

1 means that the goal of the person is to cause the death. Not  
2 to hurt them real bad, not to wing them. It's not self-defense  
3 because self-defense, you're not ever going to be guilty of a  
4 crime if it was self-defense or defense of a third person.  
5 It's not going to be a mistake or an accident like I was  
6 cleaning my gun and the gun went off. It's not going to be  
7 whether somebody was insane at the time of the offense or  
8 mentally retarded. It means that the person formed the goal to  
9 cause the other person's death and did what it took to get  
10 there.

11                   That intent, though, is not premeditation. I  
12 don't ever have to prove premeditation. Let me give you an  
13 example. Let's say that I come up to Elaine with a gun and I  
14 say, give me your shoes, and she says, I'm not giving you my  
15 shoes. And I point the gun at her head and I say, give me your  
16 shoes. She decides she's going to take a swing at me to defend  
17 herself against me, and I shoot her in the head and take her  
18 shoes. I may not have thought about killing her. I may not  
19 have planned on killing her yesterday, or even five minutes or  
20 even 30 seconds before I pulled the trigger. But when I pulled  
21 the trigger and shot her in the head, did I intend to cause her  
22 death?

23           A.     Yes, ma'am.

24           Q.     Right. So we say intent can be formed in an  
25 instant, and -- but it is intent, and I have to prove that the



1 goal of the person was to cause the death at the time of the  
2 offense. That in and of itself even isn't capital murder.  
3 What made the crime I just committed against Elaine capital  
4 murder is the robbery, me demanding her shoes, me taking her  
5 shoes. Capital murder is always going to be an intentional  
6 murder, plus that extra robbery or sexual assault or killing a  
7 police officer or a child younger than 10. It's going to be an  
8 intentional murder, plus something else.

9 In this case, we've alleged an intentional  
10 murder committed during the course of a robbery. That is what  
11 I have to prove to the jury beyond a reasonable doubt in order  
12 for the jury to return a verdict of guilty. Sometimes we say  
13 the indictment works like a checklist for the jury. You go  
14 through and you say did the State prove this crime was  
15 intentional and did they prove it was a robbery and did they  
16 prove it was this Defendant that committed the crime? If I've  
17 failed to prove any one of those things, the jury's verdict has  
18 to be not guilty, okay?

19 So put you on a hypothetical capital murder --  
20 not this case because we can't talk about this case. If I  
21 prove that it was an intentional murder, that this Defendant on  
22 trial did, in fact, kill the victim intentionally, but there is  
23 no evidence that there was a robbery, the verdict would be not  
24 guilty. Can you see why?

25 A. Yes.

1 Q. Because --

2 A. Because you didn't prove both actions happened.

3 Q. Exactly. Now, the jury may be allowed to consider a  
4 lesser offense of murder, if they believe that the person  
5 intentionally caused the death of the victim. They may be able  
6 to convict him of murder, but not capital murder. You can see  
7 why?

8 A. I understand, yes, ma'am.

9 Q. And if they convict of murder, there's a punishment  
10 range because I told you capital murder, we have life without  
11 parole or the death sentence. But for murder, neither one of  
12 those things would be in front of the jury.

13 Now they would be having to decide is five years  
14 the proper sentence or 10 or 20 or 30, all the way up to even  
15 life in prison. And they would get more evidence in the  
16 punishment phase of the trial to help them decide is this a  
17 five-year kind of case, or is this a life kind of case. Does  
18 that make sense?

19 A. Yes, ma'am.

20 Q. And if you're on a jury where the verdict -- where  
21 the -- the conviction is for murder, could you consider and  
22 keep an open mind to the full range of punishment?

23 A. Yes, ma'am.

24 Q. And if you thought five years was the proper  
25 sentence for the person convicted of murder, could you assess a

1 five-year sentence?

2 A. Yes, ma'am.

3 Q. If you thought a life sentence was proper, could you  
4 assess a life sentence?

5 A. Yes, ma'am.

6 Q. That's -- when I talk about my burden of proof,  
7 there's never going to be any shortcuts. There's never a  
8 technicality. I have to do everything that I've alleged, and I  
9 have to prove it beyond a reasonable doubt or the jury, by  
10 their oath, cannot find the person guilty. But if I prove all  
11 of the elements, if I check that list off beyond a reasonable  
12 doubt, the jury has to, following their oath, return a verdict  
13 of guilty. And for capital murder, if you return a verdict of  
14 guilty of capital murder, now we're talking about life without  
15 parole or the death sentence.

16 And it's not ever going to be asked of the jury  
17 to vote do you -- you know, how many think he deserves death,  
18 how many think he deserves life. We get there through that  
19 process, the Special Issue 1 and Special Issue 2 that you read  
20 about in the pamphlet.

21 A. Okay.

22 Q. So I want to talk to you -- I'm going to put you  
23 again -- once you've convicted the person of capital murder,  
24 now we go into the punishment phase. The jury would come back  
25 in the courtroom and more evidence is presented to the jury to

1 help them decide whether the life without parole sentence is  
2 proper or whether that should be a death sentence.

3 Special Issue Number 1 is the first thing that  
4 the jury goes to consider. And, again, you know, we had that  
5 presumption of innocence in the first part of the trial?

6 A. Yes, ma'am.

7 Q. That's gone now, right, because you've convicted?

8 A. Correct.

9 Q. But now we have a presumption that the life sentence  
10 is proper. And in the vast majority of cases of capital  
11 murder, the life sentence is proper under our law. The law is  
12 going to presume that the answer to Special Issue 1 is no  
13 unless and until I prove beyond a reasonable doubt that the  
14 answer is yes.

15 So you always look to the State to prove whether  
16 there's a probability that the Defendant would commit criminal  
17 acts of violence that would constitute a continuing threat to  
18 society. And we know by now, the best the person can do is  
19 life without parole, right?

20 A. Correct.

21 Q. And they're going to serve that where? Where is  
22 that sentence going to be served?

23 A. In prison.

24 Q. In prison. So when we talk about society, we're  
25 talking about even prison society.

1 A. Okay.

2 Q. Okay. And I have to prove beyond a reasonable doubt  
3 that it's more likely than not -- that's what probability  
4 means, more likely than not -- more likely than not that the  
5 Defendant you've convicted of capital murder will commit  
6 criminal acts, plural, of violence in the future that are going  
7 to constitute an ongoing threat -- a continuing threat to  
8 society, even in prison. Do you think there's violence in  
9 prison?

10 A. Most definitely.

11 Q. Do you think that the people inside the prison,  
12 whether they're inmates or guards or teachers or visitors  
13 deserve the same protection you and I deserve?

14 A. Yes.

15 Q. And that we ought to protect them from people who  
16 would commit criminal acts of violence?

17 A. Yes, ma'am.

18 Q. Do you believe that that's capable of proof? In  
19 other words, do you think it's possible that I could prove what  
20 someone would be more likely to do in the future?

21 A. Yes, I think it's possible.

22 Q. And what do you think is important in helping you  
23 answer that question?

24 A. (No response.)

25 Q. I mean, how do you go about predicting what somebody

1 is more likely than not to do in the future?

2 A. I guess you can't, but if you can, you know, show a  
3 history or I mean, if it's just a continuation, then you just  
4 have to assume that it's going to continue.

5 Q. You look at all of the evidence, whether -- and at  
6 this time you will know from the evidence that there's a  
7 criminal history in the past or not, a history of violence or a  
8 history of peacefulness. You'll know more about the character  
9 of the person you've convicted, his background, upbringing,  
10 educational background. You know, all of the evidence will be  
11 there for the jury to consider, all the way back to birth to  
12 the day of trial. And you believe you could look at all of  
13 that and decide whether I've proved beyond a reasonable doubt  
14 that this Defendant will more likely than not be a continuing  
15 threat?

16 A. Yes, ma'am.

17 Q. And if I fail to prove that, if the jury is not  
18 convinced that this person will more likely than not -- not  
19 absolutely, right?

20 A. Right.

21 Q. Because I'll never be able to predict --

22 A. Correct.

23 Q. -- with 100 certainty what somebody will do.

24 A. Correct.

25 Q. But I have to prove it's more likely than not. And

1 if I do that, you'd answer that yes?

2 A. Correct.

3 Q. And if I failed to do that, then the presumption is  
4 the answer is no and that's what stands?

5 A. Correct.

6 Q. If you answer that no, then the life sentence is the  
7 proper sentence. If the person can be safely incarcerated,  
8 then that's all that the law is going to ask.

9 A. Yes.

10 Q. If the jury answers that no, the Judge sentences the  
11 person to life without the possibility of parole and the trial  
12 is over. The jury never considers Special Issue 2. You don't  
13 get there. If, however, the jury unanimously agrees that I've  
14 done my job, I've proved that, the answer is yes, you move on  
15 to Special Issue 2. And now my job is done. I don't have any  
16 other responsibilities in terms of burdens of proof. I've done  
17 all that the law is going to require me to do in order for the  
18 jury to return a death sentence.

19 But the jury's job is not done. The jury still  
20 has to look at Special Issue 2. And that's a lot of words, I'm  
21 going to try to sum up for you. Basically it's going to  
22 require the jury to go back one more time and look at all the  
23 evidence again, everything from the first part of the trial and  
24 the second part of the trial, circumstances of the offense,  
25 Defendant's character and background, personal moral

1 culpability of the Defendant, look at everything you heard, and  
2 ask yourself whether there was something in the evidence that  
3 tells me that the Defendant really should get a life sentence  
4 instead of a death sentence. And nobody is going to tell you  
5 what that is. We don't have a checklist for what is mitigating  
6 or isn't mitigating, like we talked about with intoxication or  
7 addiction.

8 A. Right.

9 Q. Every juror will decide for themselves. After they  
10 consider all the evidence, you kind of categorize it. I think  
11 some jurors tell us that severe childhood sexual abuse or  
12 physical abuse could be mitigating to them. That might be  
13 something that would lessen the Defendant's moral  
14 blameworthiness. Other jurors might say, you know, maybe we're  
15 not talking about mental retardation, but maybe we're talking  
16 about a low I.Q., or not the best educational background. That  
17 might be mitigating. Maybe intoxication or addiction might be  
18 mitigating. But every juror looks at everything in the  
19 evidence and decides for themselves is this mitigating, maybe  
20 it's aggravating, maybe it's neither. Maybe it doesn't sway  
21 you at all. We all have something in our background that  
22 wasn't the best. Grew up in a single parent household,  
23 poverty, whatever the case may be, that doesn't move me, but it  
24 might move somebody else. Does that make sense?

25 A. Yes.



1 Q. So you decide if there is something that you heard  
2 in the evidence that to you was mitigating, if it's mitigating,  
3 is it sufficiently mitigating? Is it enough for you to say  
4 despite the fact that the person is guilty of an intentional  
5 killing in the course of a robbery, despite the fact that I  
6 believe the person is going to be a threat in the penitentiary,  
7 I believe if we send him to prison, more likely than not he's  
8 going to be a continuing threat. Despite all of that, there  
9 was something that tells me the death sentence is not proper.  
10 Does that make sense?

11 A. Yes, ma'am.

12 Q. And it will be up to the jury to decide whether  
13 there was something sufficiently mitigating to warrant a life  
14 sentence instead of a death sentence. That is -- that  
15 basically -- we sometimes call that the safety net. That's the  
16 jury's opportunity to exercise their discretion over the  
17 evidence.

18 Now, what is not proper in Special Issue Number  
19 2 is to say, I'm automatically going to answer that yes because  
20 I don't like the death sentence. That scares me. It's too  
21 final, I don't like it, because that wouldn't be based on the  
22 evidence.

23 A. Correct.

24 Q. It's also not proper for the jury to say, I don't  
25 care what I hear, I'm always going to answer that no because

1 I'm not sending a dangerous person to the penitentiary. You  
2 just have to consider everything and then decide in your  
3 heart -- obviously, if there's deliberation among the jurors  
4 and they can talk to each other about it, but in your mind and  
5 in your heart, if you hear something that you believe is  
6 sufficiently mitigating to warrant a life sentence, would you  
7 answer that yes?

8 A. Yes.

9 Q. And if you didn't hear anything that told you that  
10 the life sentence was more proper, you could answer it no, even  
11 though you know that the Judge would be left with no option but  
12 to sentence him to death?

13 A. Yes, ma'am.

14 Q. And you could live with your decision either way?

15 A. I'd have to, yes, ma'am.

16 Q. One thing that I want to point out is some jurors  
17 tell us that what might be important to them in Special Issue 2  
18 is remorse. If somebody felt bad about what they did, that  
19 that might be something they would consider mitigating. And I  
20 tell every juror that comes in, you may never know whether the  
21 person feels bad about what they did because of the Fifth  
22 Amendment, right?

23 A. Correct.

24 Q. If they choose not to testify, that personal moral  
25 culpability may not be in the evidence. And if it's not in the

1 evidence, you just don't consider it. But you can never  
2 require the Defendant to testify in order to answer one of  
3 these questions, right?

4 A. Correct.

5 Q. Do you have any questions for me about any of  
6 this -- about the process? Have I explained the law to you  
7 clear enough?

8 A. Yes, ma'am, you've explained it.

9 Q. Is there anything that I've explained to you that  
10 you feel like that's just a job I can't take on, I can't do  
11 this and be fair to both sides, for whatever reason?

12 A. No, ma'am.

13 Q. The last thing that I want to talk to you about, it  
14 relates to this Special Issue Number 2, page 30 -- I'm sorry,  
15 page 6, Question 39. We talked to you about genetics and  
16 circumstances of birth and upbringing and environment and  
17 whether that should be considered in punishment. You probably  
18 now know, although you didn't when you answered this, that what  
19 we're talking about is stuff that might be in the evidence for  
20 Special Issue Number 2. You have to consider everything. You  
21 said you disagree. There's lots of people who grew up in an  
22 environment, wasn't great, and we turn out okay. We make  
23 choices. This question isn't saying that you have to consider  
24 these things mitigating. This question tells you -- is asking  
25 could you consider it all and then decide whether it's

1 mitigating or not.

2 A. I could consider it, but it's not -- as -- you know,  
3 that doesn't -- like, as you said, move me. You know, I grew  
4 up with -- wasn't the best, but --

5 Q. Right.

6 A. But I didn't --

7 Q. You turned out one way, your sister turned out  
8 another?

9 A. Correct.

10 Q. All it's asking is would you consider it.

11 A. Most definitely.

12 Q. Consider everything, and then make up your mind.

13 And -- and obviously, by the time we get to Special Issue 2,  
14 we're talking about a pretty bad guy, right? We're talking  
15 about somebody that's guilty of capital murder and is going to  
16 be a continuing threat more likely than not.

17 A. Correct.

18 Q. But you could still assess a life sentence if there  
19 was something that told you that was the right thing?

20 A. Most definitely.

21 Q. That's all I have then for you. Thank you.

22 A. Thank you.

23 DEFENSE VOIR DIRE EXAMINATION

24 BY MS. BERNHARD:

25 Q. Ms. Salazar, again, my name is Catherine Bernhard,

1 and I'm going to have some questions for you -- over some of  
2 the same questions that Ms. Moseley just talked to you about.  
3 Because obviously over here at this table we have a slightly  
4 different take on some of these issues.

5 I want to start out by saying and reiterating  
6 really, there are no right or wrong answers to what we're  
7 asking you here today. We just kind of want to know how you  
8 feel about some of the issues that may apply in a case like  
9 this. Nobody is going to argue with your feelings or tell you  
10 you can't feel that way or shouldn't feel that way. We just  
11 kind of need to know how you feel about some of these issues,  
12 and that's really why we give you the questionnaire before we  
13 tell you what the law is because we want to know how you feel.  
14 We're not after just can you follow the law, but we want to  
15 know how your feelings might interact with your ability to  
16 follow the law. Does that make sense?

17 A. Yes, ma'am.

18 Q. And I also want to tell you -- I know you think  
19 you're -- you're very concerned about doing your civic duty and  
20 -- and fulfilling your role as a citizen. You have fulfilled  
21 your civic duty simply by showing up on June 21st and filling  
22 out this very lengthy questionnaire and then showing up today  
23 and submitting yourself to a bunch of questioning by lawyers.  
24 So I don't want you to think that if you answer the questions a  
25 certain way or don't answer them a certain way, that somehow

1 you're not as good of a citizen if you don't end up on the  
2 jury. It's all part of the process, as we've explained, and,  
3 you know, you've fulfilled your civic duty and -- and your  
4 citizenship responsibility simply by participating in the  
5 process thus far, okay?

6 A. Yes, ma'am.

7 Q. And one other thing that I want to just kind of  
8 point out before we get into some of this other stuff is even  
9 though we're spending a lot of time talking about the death  
10 penalty and this little procedure that we're doing here today,  
11 I don't want you to think that for some reason we at the  
12 Defense table think it's a foregone conclusion that the jury is  
13 ever going to be called upon to answer those special issues or  
14 that we're going to reach the death penalty, because it's our  
15 position at this table that the jury that's selected is going  
16 to find Matthew Johnson not guilty of capital murder and you're  
17 never going to be addressing those special issues. But because  
18 of the way the process is set up, we have to talk about that  
19 now because it's one of the things that makes this case  
20 different from most other criminal cases that are tried in this  
21 building. Do you understand?

22 A. Yes, ma'am.

23 Q. Okay. I did want to address some things in your  
24 questionnaire. What purpose do you think the death penalty  
25 serves?

1           A.     To keep someone from committing crimes more and  
2 more, over and over. You've done a horrific crime, even if  
3 it's one time. If it's against a child, if it's against the  
4 elderly, I think the punishment should fit the crime.

5           Q.     Okay. So for you -- so in your mind, the death  
6 penalty should be based on the crime that was actually  
7 committed rather than what somebody is going to do in the  
8 future?

9           A.     I agree. And -- in a sense, and if it's -- if  
10 it's -- I mean, it's hard to tell what they're going to do in  
11 the future, but if there's a history and it's been ongoing, I  
12 find it hard for it to stop, or, you know, where they  
13 couldn't -- where they wouldn't commit another crime.

14          Q.     Okay. Do you think a life without parole sentence  
15 fulfills that role at all, or do you think it has to be the  
16 death penalty?

17          A.     I don't think it has to be the death penalty, no.

18          Q.     Okay. What I'm getting at is what in your mind --  
19 why should we have the death penalty? Why can't we just be  
20 satisfied with locking everybody up forever?

21          A.     Well, I mean, as I said, I mean, if it's -- if  
22 it's -- so many crimes against children, and I just don't --  
23 and because I have them, I just -- I just wouldn't consider  
24 that being a life just because it's so dear to my heart.

25          Q.     Okay.

1           A.     So I would consider the death penalty at all times  
2 when it comes to a child.

3           Q.     So in your mind the death penalty should be  
4 primarily -- and I'm not talking about the law here. I'm just  
5 talking about how you feel or what you think. But in your  
6 mind, the death penalty should be based on the act that was  
7 actually committed?

8           A.     I agree, yes.

9           Q.     Rather than what somebody is going to do in the  
10 future or -- or something like that?

11          A.     Yes. I mean it -- yeah.

12          Q.     Okay. You've -- you said you did have some prior  
13 jury service but the case settled?

14          A.     Yeah, it was a -- it was a civil.

15          Q.     A civil case?

16          A.     Yes.

17          Q.     Okay. Just to kind of give you the -- a little  
18 primer on some of the issues. I know we talked about the State  
19 has the burden of proving things beyond a reasonable doubt, and  
20 we don't have a definition for what that means. It's up to  
21 each individual juror to determine what proof beyond a  
22 reasonable doubt is to them. But I think sometimes it helps if  
23 we can put it into context of other burdens of proof that we  
24 have in the legal system that we do have definitions for. So  
25 in a civil case -- I don't know how long -- how far along in



1 the process you got with your jury service, but you might  
2 recall that there was some talk about a burden of proof of  
3 preponderance of the evidence?

4 A. Uh-huh.

5 Q. Does that ring a bell?

6 A. Yes.

7 Q. And preponderance of the evidence just means that  
8 the scales are tilted slightly one way, 51 percent to  
9 49 percent. That's what you have to prove to prevail in a  
10 civil case, even if you're talking about millions upon millions  
11 of dollars. You just prove your case by 51 percent, and you  
12 win. That's a preponderance of the evidence.

13 We know that proof beyond a reasonable doubt is  
14 much higher than that.

15 Now, there's another burden of proof that we  
16 have in the legal system called clear and convincing evidence,  
17 and that's a burden of proof that might apply in a situation  
18 where let's say the State was trying to terminate someone's  
19 parental rights, you know, take their children away from them  
20 forever because they weren't a good parent. You would expect  
21 the government would have to have pretty good evidence in order  
22 to do that, wouldn't you?

23 A. Yes, ma'am.

24 Q. And what we have is -- in the system is the  
25 government is required to prove that by clear and convincing

1 evidence. And it's not quantified like the preponderance  
2 standard is, but we do know that it's higher than the  
3 preponderance standard because it should take more evidence to  
4 terminate away (sic) parental rights than it does to, you know,  
5 win a bunch of money.

6 A. Yes, ma'am.

7 Q. But beyond a reasonable doubt is higher even than  
8 that. It is the highest burden that we have anywhere in the  
9 legal system, and that's because the way our system is set up,  
10 we regard a person's life and a person's liberty as pretty much  
11 the most important things that you can be making a decision  
12 about. Would you agree?

13 A. Yes, ma'am.

14 Q. And so proof beyond a reasonable doubt, although  
15 it's not defined, we do know that it's the highest burden that  
16 we have anywhere. And that's the kind of burden that you would  
17 be asked to hold the State to in any criminal case, whether  
18 it's a traffic ticket or a capital murder death penalty case.  
19 The burden of proof is always going to be the same, and it's  
20 always going to be on the State of Texas. We don't have to  
21 prove anything. We don't have to prove that Matthew Johnson is  
22 not guilty. We don't have to prove that Matthew Johnson is not  
23 going to be a continuing threat to society. We have no burden  
24 to prove anything to you. Do you think that's how the system  
25 ought to work?

1 A. Yes. I mean, it's --

2 Q. It would be kind of hard to prove that you didn't do  
3 something. Would you agree with that?

4 A. Yes.

5 Q. If the government made an accusation, and you could  
6 say, well, but I can prove I was home alone with my family.  
7 That can be a hard thing to prove. Would you agree?

8 A. Yes.

9 Q. I think that's part of the reason why we've designed  
10 a system where the State has the burden of proving it. The  
11 Defense doesn't have to prove that somebody is not guilty or  
12 somebody's innocent. It's all on the State. And you think  
13 that's how it should be?

14 A. Yes.

15 Q. Okay. I want to kind of put you on a hypothetical  
16 capital murder jury and make sure we're talking about the same  
17 things. Ms. Moseley explained to you that when we talk about  
18 capital murder, we're talking about an intentional killing in  
19 the course of another felony -- for our purposes, in the course  
20 of committing a robbery. There are other ways of committing  
21 capital murder. If somebody murders a child under the age of  
22 10, that's a capital murder. And I think that's part of what  
23 you were talking about is one of the reasons for the death  
24 penalty. But there are a lot of different ways of committing a  
25 death eligible for capital murder, but I'm going to limit it to

1 kind of what we're dealing with in this case just for  
2 simplicity's sake. So when we talk about capital murder, we're  
3 talking about an intentional killing in the course of a  
4 robbery. And when we say intentional, we mean that it's the  
5 person's conscious objective or desire to cause the result.  
6 They wanted somebody dead, and they did what they had to do to  
7 make that happen, okay? It's not an accident. It's not  
8 self-defense. It's not a mistake, or any of those other things  
9 that might be a legal justification or defense. If it was an  
10 accident, the person would be not guilty. If it was  
11 self-defense, the person would be not guilty. You understand?

12 A. Yes, ma'am.

13 Q. So we're talking about an intentional killing in the  
14 course of a robbery because that's what makes it a capital  
15 murder is that extra thing, that in the course of a robbery.  
16 Because just a plain old intentional murder would not be a  
17 capital murder, even if it's a heinous, horrible murder. If  
18 that's all it is, it's not capital and it's not subject to the  
19 death penalty.

20 So I want you to assume that you and 11 other  
21 jurors on your hypothetical capital murder jury have been  
22 convinced beyond a reasonable doubt that the person is guilty  
23 of an intentional killing in the course of committing the  
24 offense of robbery. What are your feelings on the death  
25 penalty at that point for that person?

1           A.     If the law says they're going for -- I mean, then,  
2 yeah, capital murder is -- I mean, why can't you just rob them,  
3 just rob them, you don't have to kill them.

4           Q.     Okay. You know, for somebody who is guilty of  
5 capital murder, we've explained that there are only two  
6 possible punishments. That's going to be life without parole  
7 or the death penalty. Now, when you find -- when you and the  
8 11 other jurors find someone guilty of capital murder, an  
9 intentional killing in the course of a robbery, is that a death  
10 penalty case to you at that point?

11          A.     No, because they can have -- you can decide whether  
12 or not life without parole -- wouldn't that go into Special  
13 Issue Number 2?

14          Q.     Well, you first address Special Issue Number 1, and  
15 that's really how the State of Texas has decided to sort out  
16 who gets the death penalty and who gets life without parole.  
17 The law presumes that life without parole is the appropriate  
18 punishment for somebody who's convicted of capital murder.  
19 It's much like the presumption of innocence, like in the  
20 beginning of the trial where you presume that a defendant is  
21 not guilty. Once you've found somebody guilty of capital  
22 murder, you presume that the appropriate sentence is going to  
23 be life without parole. Do you understand?

24          A.     Yes, ma'am.

25          Q.     So that's where you start out for the person who's

1 guilty of that intentional killing in the course of committing  
2 a robbery. Can you do that?

3 A. Yes, ma'am.

4 Q. And it only becomes the death penalty once you get  
5 over here to Special Issue Number 1 and the State has the  
6 burden of proving that to you beyond a reasonable doubt, once  
7 again. Much like the indictment, they've got to prove  
8 everything in that special issue question to all 12 jurors  
9 beyond a reasonable doubt.

10 And just to kind of talk a little bit about what  
11 that issue is getting at, I know we've told you that  
12 probability in that context means more likely than not because  
13 anything is possible. So we're talking about more likely than  
14 not, a probability -- that they have to convince you that the  
15 Defendant would commit criminal acts of violence. And, again,  
16 none of these terms are going to be defined for you, so it's  
17 just up to each individual juror to decide what they mean to  
18 them.

19 Some person could say a criminal act of violence  
20 would be somebody beating somebody to a pulp. Somebody might  
21 say, well, if it was just a fist fight, yeah, maybe I don't  
22 think that's -- that's as severe. It's up to the individual  
23 juror to determine what is sufficient to be a criminal act of  
24 violence to them. There's not going to be a definition that  
25 has to rise to this level. But I would like to point out that

1 it does say acts, plural, so it would seem to contemplate more  
2 than one criminal act. Would you agree?

3 A. Yes.

4 Q. And it also -- the question doesn't just stop there.  
5 It doesn't just ask you if you think the person is going to  
6 commit criminal acts of violence. It wants you to go on to  
7 then decide that those criminal acts of violence are such that  
8 they would constitute a continuing threat to society. So it  
9 would seem to be asking for something more than just a criminal  
10 act of violence. Would you agree?

11 A. Yes.

12 Q. It would have to rise to the level that this is --  
13 this is serious enough that we think it's -- it's a continuing  
14 threat to society.

15 A. Yes.

16 Q. Does that make sense?

17 A. Yes, ma'am.

18 Q. So that has to be -- all 12 people have to be  
19 convinced of that beyond a reasonable doubt, okay? If the  
20 answer to that question is no, then the trial is going to be  
21 over, and the person gets life without parole because the jury  
22 has decided that this person is not going to be a continuing  
23 threat to society and that's how we, you know, make that  
24 determination under the law in Texas.

25 But if the answer is yes, so let's -- back on

1 your hypothetical capital murder jury. The answer is yes.  
2 You've decided that, yes, this person is guilty of an  
3 intentional killing in the course of a robbery, you and all 11  
4 other jurors, and that furthermore, after you've gotten into  
5 the punishment phase -- because there are kind of two phases to  
6 the trial, one where the jury decides is the person guilty or  
7 not guilty of capital murder, and then a second phase we may  
8 hear additional evidence and then you answer those special  
9 issues.

10 So on your hypothetical capital murder jury,  
11 let's say that you and the 11 other jurors have found this  
12 person is guilty beyond a reasonable doubt of an intentional  
13 killing in the course of a robbery. And you also -- you and  
14 the 11 other jurors have now been convinced beyond a reasonable  
15 doubt that this person is going to be -- there's a probability  
16 that this person is going to commit criminal acts of violence  
17 that constitute a continuing threat to society. This person is  
18 going to be a future danger, is kind of how we sometimes  
19 shorten it. Can you consider a life sentence for that person  
20 at that point?

21 A. Could I consider a life sentence?

22 Q. Yes.

23 A. Yeah, I can consider it.

24 Q. Okay. Because some people say, you know, if  
25 somebody is guilty of capital murder and I know they're going



1 to be a threat in prison, I'm -- you know, mitigation doesn't  
2 matter. I'm not going to send a dangerous person to prison  
3 where they're a potential threat to others.

4 A. I mean, I can -- like I said, I mean, I can consider  
5 it. I mean, if you see all the evidence and see -- I mean, you  
6 can consider it. I mean, you'd have to look at everything  
7 before you can say that.

8 Q. But do you think in the proper circumstances if you  
9 found sufficient mitigating evidence, that you could send a  
10 dangerous capital murderer to prison, even knowing that they're  
11 going to be a threat there?

12 A. If -- knowing they're going to be a threat there?

13 Q. Because you've decided they're going to be a  
14 continuing threat to society.

15 A. Then if I'm knowing that they're going to be a  
16 threat there, then, no -- I mean, I would have to go with the  
17 death penalty.

18 Q. Okay.

19 A. If they're going to continue being a threat.

20 Q. Okay. Because that -- you have to answer Question  
21 Number 1 yes before you ever get to that second special issue.

22 A. Right.

23 Q. So by the time you get to that second special issue,  
24 you know they are going to be a threat -- a continuing threat  
25 to society, prison or wherever. So what I'm hearing you saying

1 is that if you think they're going to be a continuing threat to  
2 society, then they get the death penalty and mitigation doesn't  
3 really matter?

4 A. No, mitigation -- I mean, I would like to go to  
5 Special Number 2. When do I get to go there?

6 Q. You only go there if you and the 11 other jurors  
7 have all decided that this person is going to be a threat  
8 wherever they end up.

9 A. Then, yes -- I mean, they would have to have the  
10 death penalty. If they're going to continue being a threat,  
11 yes. And that's been proven, yes.

12 Q. Okay. You understand that the law would then  
13 require to you go on to Special Issue Number 2 and consider  
14 mitigation. But what I hear you saying is that you think that  
15 if you and the 11 other jurors have found somebody is going to  
16 be a continuing threat to society --

17 MS. MOSELEY: Judge, I'm sorry, but it's not  
18 going to be. It's more likely than not.

19 THE COURT: Sustained.

20 Q. (BY MS. BERNHARD) That is more likely than not  
21 going to commit criminal acts of violence that would constitute  
22 a continuing threat to society, that that's been proven to you  
23 beyond a reasonable doubt, what I hear you saying is that -- at  
24 that point mitigation doesn't matter to you?

25 A. No. I mean --

1 Q. You believe beyond a reasonable doubt that the  
2 person -- there's a probability that the person is going to be  
3 a threat in the future.

4 A. Well, you're saying mitigation doesn't matter to me.  
5 It does, because I mean, you -- yes, if you're going to be a  
6 continuation to threat -- the death penalty would be there, but  
7 then you have to look at all -- at everything.

8 Q. Okay.

9 A. And consider all -- consider all evidence before  
10 coming to that -- I mean --

11 Q. But my point is you don't ever get to that  
12 mitigation question, that second special issue, unless you and  
13 the 11 other jurors have already decided that there's a  
14 probability that this person is going to be a threat in prison.

15 A. If -- if likely they're going to be a threat, you  
16 would have the death penalty. And then you would, again, sit  
17 down and look at everything and see if there's anything else  
18 that -- that you're missing or that you're not considering to  
19 have a life sentence.

20 Q. Okay. That's kind of where I'm getting at. So  
21 that's -- and it's a little different from what I thought you  
22 said previously, but we may not be on the same page here.  
23 Because what I'm getting at is you never address that  
24 mitigation special issue unless you and the 11 other jurors  
25 have all unanimously found that there's a probability that this

1 person is going to be a threat in the future.

2 A. Right. I mean, you -- if they're going to be a  
3 threat, then, yes, the death penalty. But then you again  
4 see -- look at all evidence and make sure you're not missing  
5 anything to see if they may -- if maybe a life sentence would  
6 be more --

7 Q. Okay. So you could consider a life sentence for a  
8 person even though you had already previously found there's a  
9 probability that they're going to be a danger in prison?

10 A. Yes. I mean, by looking at all evidence and -- and  
11 making sure nothing was missed.

12 Q. If you found --

13 A. Yeah, or -- I'm sorry.

14 Q. Go ahead.

15 A. No, I'm just -- you know, if you're looking at all  
16 evidence and considering everything.

17 Q. So if you found sufficient mitigating evidence,  
18 whatever that is to you, you could be okay with a life sentence  
19 for somebody that you have also found there's a probability  
20 that they're going to be a threat in prison?

21 A. Yes.

22 Q. Okay. You see how that's a little different from  
23 what I thought you were saying before, but I -- were we just  
24 not clear?

25 A. I mean, it was either all or nothing. I mean, I

1 guess that's what -- I mean, it's definite that they're going  
2 to be a society -- I mean, a threat to society. I mean, I  
3 guess that's what I understood. And it's not. It's -- it's  
4 more than -- I guess, what -- because --

5 Q. Well --

6 A. -- it's not a --

7 Q. -- you found -- you and the 11 other jurors have  
8 found beyond a reasonable doubt, that highest burden that we  
9 have, that it's more likely than not that this person is going  
10 to be a threat in prison.

11 A. There you go, yes.

12 Q. So you can find that and -- and, you know, be  
13 convinced of that beyond a reasonable doubt and still, in the  
14 right set of circumstances, be okay with a life sentence?

15 A. Yes, ma'am.

16 Q. Knowing -- even knowing that the person is going --  
17 or there's a probability that the person would be a threat?

18 A. Yes, ma'am, because I'd have to consider everything.

19 Q. Okay. Let me talk a little bit about the second  
20 special issue. Again, we've told you that nobody really has  
21 the burden of proof on that issue.

22 A. Correct.

23 Q. The Defense doesn't have a burden of proof on the --  
24 on the first special issue, so would you be able to answer that  
25 even if you didn't hear anything from the Defense?

1 A. Yes.

2 Q. And just look to the State?

3 A. Yes, it's their -- it's their job to prove it.

4 Q. And if they don't prove that to you, the answer to  
5 that first special issue would be no?

6 A. Correct.

7 Q. Whether you heard from the Defense or not?

8 A. Correct.

9 Q. Okay. So you move to the second special issue where  
10 nobody really has a burden of proof. And in some respects I  
11 think the second special issue is much more subjective than the  
12 questions that the jury has had to address previously. Would  
13 you agree with that?

14 A. Yes.

15 Q. Because mitigation is -- is really pretty broad, and  
16 it's really kind of a personal moral judgement kind of thing  
17 that's going to be different for each juror. Would you agree?

18 A. Yes.

19 Q. Because nobody is going to tell you what's  
20 mitigating or what's not mitigating or what's sufficiently  
21 mitigating or what's not sufficiently mitigating. And those  
22 are kind of personal moral judgements. Would you agree?

23 A. Yes, ma'am.

24 Q. And those are going to be influenced by each  
25 individual juror's personal moral compass and their, you know,

1 life experiences, the things that make them think the way they  
2 think. Would you agree?

3 A. Yes, ma'am.

4 Q. And mitigation itself can be really very broad. It  
5 can be anything that calls for a sentence less than death. And  
6 it's up to each individual juror. And in this instance, the  
7 jurors do not have to be unanimous in what they think miti --  
8 is mitigating in a particular case. And what I mean by that is  
9 that one juror might go back there and say, you know, well, I  
10 think the fact that this person had a horrible addiction and  
11 they tried to kick it and they just couldn't and they really  
12 struggled, I think that's mitigation. And I think it's  
13 sufficiently mitigating.

14 And another juror could say, well, I don't think  
15 that's mitigation because they made the choice in the first  
16 place to use drugs so I don't find that mitigating at all, but  
17 I find the fact that that they were sexually abused as a young  
18 child, I feel -- I find that to be mitigating and I find it to  
19 be sufficiently mitigating. And a third juror could say, well,  
20 I don't think either of those, to me, are sufficiently  
21 mitigating, but I think there's something sufficiently  
22 mitigating here. I just can't quite articulate it. Would that  
23 -- do you think -- do you think sometimes it's possible that a  
24 person could just say, I feel it in my gut that there's some  
25 sufficient mitigation here, but I can't put into words why I

1 feel that?

2 A. Yeah, I guess so. I mean, everybody has a feeling.  
3 I mean, everyone has a gut feeling.

4 Q. And particularly when you're talking about something  
5 that could be a personal moral judgement?

6 A. Yes.

7 Q. It may be something that a juror can't really  
8 articulate. They just could say I think based on the evidence  
9 that life sentence is the appropriate sentence in this case.

10 A. True, yes.

11 Q. And would that person's opinion still be entitled to  
12 respect?

13 A. Of course.

14 Q. As much as the others who can articulate and explain  
15 why they think they -- the way they do?

16 A. Of course.

17 Q. And you see how all of those jurors may not agree on  
18 what's mitigating, but they can all answer that question in the  
19 same way. Do you understand that?

20 A. Yes.

21 Q. So you don't have -- in other words, the jurors do  
22 not have to be unanimous or agree on what they think mitigation  
23 is in a particular case.

24 A. Correct.

25 MS. BERNHARD: If I can just have one moment.



1 VENIREPERSON: That's okay.

2 Q. (BY MS. BERNHARD) There was one thing I wanted to  
3 ask in your questionnaire. At the time we asked if you thought  
4 that there might be any kind of job projects that would  
5 interfere with your ability, and you said: Yes, currently  
6 working on my financial HR system's conversion for the past  
7 year of which go live in the next two weeks. Is that something  
8 that was happening back in June?

9 A. Correct.

10 Q. Okay. So that no longer is applicable to --

11 A. No, we went live June 8th, so it's done.

12 Q. So the trial date in October 28th --

13 A. Right, has nothing --

14 Q. -- doesn't cause any issues?

15 A. No.

16 Q. Do you have any questions of me about any of the  
17 process?

18 A. No, ma'am.

19 Q. Because this may be your last chance to ask us.

20 A. No, ma'am.

21 Q. Do you know any people that work in either the  
22 Dallas Police Department or the Garland Police Department?

23 A. Yes.

24 Q. Who do you know?

25 A. My husband's uncle just retired with the Dallas

1 Police Department.

2 Q. Okay.

3 A. But he worked in the courthouse, the main  
4 courthouse. That's --

5 Q. This courthouse?

6 A. No, the one off of --

7 Q. The city courthouse?

8 A. Yes. Right off of -- across from that dog park.

9 Q. Okay. What was his name? What is his name?

10 A. Oh, my goodness, his last name is Rodgers. He's  
11 obviously an uncle we never see.

12 Q. Okay. Did he do any patrol or he was --

13 A. No, he was always in the courthouse.

14 Q. He was always in the courthouse?

15 A. Uh-huh.

16 Q. Okay. Anything about that that you think would  
17 affect your ability to be a fair and impartial juror?

18 A. No.

19 Q. And is that the only person you know in either the  
20 Dallas or Garland Police Department?

21 A. My husband has a cousin who works at the jail. He's  
22 a guard. He works for the Dallas Sheriff.

23 Q. Dallas Sheriff's Department?

24 A. Yes, ma'am.

25 Q. Anything about that that you think would influence

1 your ability?

2 A. No.

3 Q. How often do you see that cousin?

4 A. Not very often.

5 Q. So you don't sit down around the dinner table and  
6 talk about what he did over at the jail?

7 A. No.

8 Q. Okay. What's his name?

9 A. Carlos Porfolio -- Carlos -- yeah, Carlos Porfolio,  
10 I think -- I believe is his last name.

11 COURT REPORTER: Can you spell it for me?

12 VENIREPERSON: Porfolio? P-o-r-f-o-l-i-o.

13 Q. (BY MS. BERNHARD) But like you said, you don't  
14 really talk to him about anything at work?

15 A. No. He's on my husband's father's side, so --

16 Q. Do you know anyone who works -- did I ask you about  
17 fire departments?

18 A. No. But, no, I don't know anyone.

19 Q. Nobody who works at any of the Dallas or Garland  
20 Fire Departments?

21 A. No.

22 Q. What about the Texas Department of Criminal Justice,  
23 the prison system?

24 A. No.

25 Q. There was one other thing. Your husband has an

1     uncle or something that's in prison?

2             A.     He has a cousin.

3             Q.     Cousin. Is this somebody that is a close cousin  
4     or --

5             A.     He used to be. Haven't seen him in 20 years.

6             Q.     Okay. So y'all don't go visit him in prison --

7             A.     No.

8             Q.     -- or anything like that?

9             A.     No.

10            Q.     Is he in prison here in Texas?

11            A.     He is.

12            Q.     Where was his -- did you follow the murder case or  
13     anything, or did you even know your husband then?

14            A.     Oh, yeah. Yes, we were married.

15            Q.     How long ago was this?

16            A.     It was -- how old am I -- almost 15 -- 20 years ago.  
17     He was 21 when he was convicted.

18            Q.     Okay. Was he -- did he go to trial, or did you  
19     follow that enough to know what happened?

20            A.     He did go to trial.

21            Q.     Okay.

22            A.     I believe he settled -- he took -- he took a --

23            Q.     A plea bargain?

24            A.     A plea bargain.

25            Q.     Okay. Was that here in Dallas County?

1 A. Yes.

2 Q. Did you attend any of the proceedings?

3 A. No, ma'am.

4 Q. Or did your husband?

5 A. No, ma'am.

6 Q. Okay. So you really haven't seen this husband's  
7 cousin since he got sentenced to prison?

8 A. Correct, haven't seen him.

9 Q. Nothing about that that you think would affect your  
10 ability --

11 A. No.

12 Q. Does he correspond with your husband, or do y'all  
13 have any communication at all?

14 A. No.

15 Q. Okay. I'm going to read a list of names and ask if  
16 you -- or if any of these sound familiar, just let me know.

17 Scott Harris, Elizabeth Harris, Chris Harris, Kenneth Marecle,

18 Amy Marecle, Michael Frank, Anna Lunceford, Jim Medley,

19 Lawrence Denson, Jonas Lucht, Greg Mansell, Carina Pinzon,

20 Digna Salmeron, Kelly Keeton, Daphne Johnson, Sherry Ann Clark,

21 Amy Armstrong, Anthony Johnson, Alma Johnson, Courtney Johnson,

22 David Williams, Danny Mullins, David Contente, Gioconda

23 Verdaguer, Donald Dunlap, Johnny Wright, Monica Cajas, Michael

24 Crosby, Roxanne Luttrell, Robbie Denmark, Quinlen Minor,

25 Margaret Tatum, Jim Bertucci, John Harris, Timothy Proctor,

1 Carlton Jenkins, Durian Allen, Gene Gathright, Manuel Turner,  
2 Andre Howard, Kenneth Lewis, or Sheldon Henry.

3 A. No, ma'am.

4 Q. None of those?

5 A. No.

6 Q. If you don't have any questions, that's all I have  
7 at this point.

8 A. No questions.

9 THE COURT: Thank you, Ms. Salazar. We're going  
10 to take a very short break.

11 VENIREPERSON: Okay.

12 THE COURT: Ask you to step out in the hall for  
13 a minute.

14 (Venireperson excused from courtroom.)

15 THE COURT: All right. Juror Number 1365A,  
16 Christina Salazar, does the State --

17 MS. MOSELEY: No challenge, Your Honor.

18 THE COURT: -- have a challenge? No challenge  
19 from the State.

20 From the Defense?

21 MS. BERNHARD: No challenge.

22 THE COURT: All right. Thank you very much.

23 (Venireperson returned to courtroom.)

24 THE COURT: Ms. Salazar, you have been qualified  
25 as a juror, so we're going to ask you to step out in the hall.

1 The bailiff is going to take a photograph of you so that the  
2 lawyers can be able to place your face with your name when  
3 they're reviewing notes. Then we'll be contacting you on  
4 October 15th to let you know whether you will, in fact, be a  
5 part of this jury.

6 (Venireperson 1365A, Christina Salazar,  
7 qualified.)

8 VENIREPERSON: Okay.

9 THE COURT: Thank you very much, ma'am.

10 VENIREPERSON: Thank you.

11 (Recess.)

12 THE COURT: All right. We're ready for Ms.

13 Jenkins.

14 THE BAILIFF: All rise.

15 (Venireperson brought into courtroom.)

16 THE COURT: Please be seated.

17 Good morning, Ms. Jenkins.

18 VENIREPERSON: Good morning.

19 THE COURT: You seem to have a leery expression  
20 on your face when you walked in. Are you nervous? All right.

21 Well, you don't need to be nervous. The lawyers aren't going  
22 to say anything to you that's going to embarrass you or brow  
23 beat you or intimidate you or anything, and there aren't any  
24 right or wrong answers, so if you can, relax, try to do that.

25 VENIREPERSON: Okay.

1 THE COURT: Do you remember being sworn in back  
2 in June by me down in the Central Jury Room?

3 VENIREPERSON: Yes.

4 THE COURT: All right. Well, you're going to be  
5 operating under that oath continuously until you are discharged  
6 from service.

7 VENIREPERSON: Okay.

8 THE COURT: And we're going to be trying this  
9 case the week of October the 28th and the week of November the  
10 4th. Has anything happened since June in your life that would  
11 prevent you from being able to sit during those two weeks this  
12 fall?

13 VENIREPERSON: No.

14 THE COURT: All right. Have you been exposed to  
15 anything about this case? Do you know anything about the facts  
16 of this particular case?

17 VENIREPERSON: No.

18 THE COURT: I'd like to introduce everyone to  
19 you. My name is Tracy Holmes, and I will be the presiding  
20 juror (sic) for the trial.

21 Sitting between us is Darline LaBar. She's the  
22 official court reporter, and it's her important job to take  
23 down everything that's said. So as a courtesy to her, I'm  
24 going to ask you to try to remember to say yes or no instead of  
25 nodding or shaking your head or saying uh-huh or huh-uh, and



1 the lawyers will remind you if you -- if that happens.

2 The State's lawyers are Andrea Moseley.

3 MS. MOSELEY: Good morning.

4 VENIREPERSON: Good morning.

5 THE COURT: And Elaine Evans.

6 MS. EVANS: Good morning.

7 THE COURT: And sitting at the Defense table is  
8 Mr. Kenneth Weatherspoon.

9 MR. WEATHERSPOON: Good morning.

10 VENIREPERSON: Good morning.

11 THE COURT: Ms. Catherine Bernhard.

12 MS. BERNHARD: Good morning.

13 THE COURT: Nancy Mulder.

14 MS. MULDER: Good morning.

15 THE COURT: And the citizen accused is at your  
16 far left, Mr. Matthew Lee Johnson.

17 Each side has 45 minutes to speak with you, and  
18 at the end of that time, we'll take a brief recess. And then  
19 if you are qualified as a juror, we'll take your photograph and  
20 you will be notified on October the 15th whether you are, in  
21 fact, a juror in this case. Will that give you sufficient time  
22 to prepare to be away from home for two weeks?

23 VENIREPERSON: Yes.

24 THE COURT: All right. Thank you very much.

25 Please proceed.

1 MS. EVANS: Thank you, Your Honor.

2 SHONQUIDRIA JENKINS,  
3 was called as a venireperson by the parties, and after having  
4 been first duly sworn, testified as follows:

5 STATE VOIR DIRE EXAMINATION

6 BY MS. EVANS:

7 Q. Good morning, Ms. Jenkins.

8 A. Good morning.

9 Q. I see from your questionnaire that you've served on  
10 a civil jury before.

11 A. Yes.

12 Q. And so now you get to see the other side of it over  
13 here at the criminal courthouse, right?

14 A. Yes.

15 Q. How long -- I know you said ultimately that reached  
16 in a settlement, but how long did that civil jury trial last  
17 that you were there for?

18 A. I would say maybe a week or so.

19 Q. Okay. So it was a little bit lengthy.

20 A. Yes.

21 Q. Sometimes our trials down here, depending on what  
22 type of case it is, just last a day, if it's a misdemeanor  
23 case. Sometimes they last, like the Judge said, for -- we  
24 expect maybe a period of two weeks. I'll tell you I have an  
25 8-year-old daughter, just one child, and I have a difficult

1 time sometimes maneuvering her and getting her to school. And  
2 I do notice you have an awful lot of young children.

3 A. Yes.

4 Q. And I just want to make sure -- because obviously,  
5 given the type of case we're talking about, a capital murder,  
6 and with the State seeking the death penalty where somebody's  
7 life is literally on the line is what we're talking about, it's  
8 important that the jurors be able to give their full devoted  
9 attention to what's going on in this courtroom. And I know you  
10 appreciate that and understand that because I can tell by your  
11 questionnaire that you do. And I just want to make sure that  
12 you've got somebody else that can help you out with your kiddos  
13 if need be.

14 A. Yes, ma'am, I do.

15 Q. Okay. And then the process generally, the Judge  
16 starts it straight up 9:00 a.m. and so we'd have to be here  
17 about 8:30 in the morning and go until 4:30, 5 o'clock in the  
18 afternoon. Is there anything with that time period that would  
19 cause you some pause or difficulty?

20 A. No.

21 Q. Okay. I know that -- had you ever been to this  
22 courthouse before?

23 A. Yes.

24 Q. You have? Okay. I know this morning we had asked  
25 y'all to arrive at 8:30, and maybe it was 9:30 when you

1 arrived. Was there any problem getting here this morning, or  
2 what was --

3 A. A little traffic.

4 Q. Okay. I completely understand. We just want to  
5 make sure that we're able to start on time, you know, once the  
6 process gets started because that will be very important and  
7 keeping to a strict schedule, but you won't have a problem with  
8 that going forward; is that correct?

9 A. No.

10 Q. Just wanted to clear up some little housekeeping.  
11 Let's talk about the type of case that we're called upon or  
12 asking you to serve as a juror on today if you're qualified,  
13 and that is a capital murder. We have regular murders down  
14 here where if I were to turn and shoot Andrea in the head right  
15 now 16 times, I'm clearly intending to kill her if I'm shooting  
16 her in the head 16 times, and especially if I were to dance  
17 around on her body and run out of here and tell everybody what  
18 I did and that I was proud of it. That would just be a regular  
19 murder because I don't have any sort of aggravating factor to  
20 go with it. And so that regular murder, as cold and callous  
21 and heinous as that may be, I wouldn't be eligible for the  
22 death penalty and I wouldn't be eligible for life without  
23 parole because there's not that intentional killing plus  
24 something else. Do you see that?

25 A. Yes.

1 Q. So a capital murder is always going to be an  
2 intentional killing, but it's going to have some sort of other  
3 factor to go with it. So capital murder here in Texas can be  
4 killing of a police officer in the line of duty, a killing of a  
5 child under the age of 10. It can be the intentional killing  
6 of two or more individuals in one transaction. Or we can have  
7 what we're talking about here, the intentional killing of a  
8 person in the course of another felony offense, here being a  
9 robbery. Do you see that?

10 A. Yes.

11 Q. And so for the offense of capital murder, there are  
12 only two possible punishments if the jury were to find the  
13 Defendant guilty and the jury was unanimous in guilt of capital  
14 murder. Those two possible punishments are life without parole  
15 or the death sentence.

16 Now, I know in your questionnaire you talk a lot  
17 about -- kind of in terms of what somebody would deserve or  
18 like Question Number 10 on page 2: If you know you are doing  
19 something wrong and cause a person to die when you deserve --  
20 then you deserve the death penalty unless it was an accident.  
21 I'll tell you what we're talking about when we say an  
22 intentional killing, it's going to be that person's conscious  
23 objective or desire is what the law says. And so in other  
24 words, you do what you meant to do. That's what intent is.  
25 And intent can be formed just like that, in an instant. Do you

1 agree with that?

2 A. Yes, ma'am.

3 Q. You know, I may go and want to steal Andrea's shoes  
4 she has on today and that -- that's my goal is to take her  
5 shoes. But I take my gun with me in case she gets feisty and  
6 sure enough, lo and behold, she does. She tells me, no, you're  
7 not taking my shoes and, you know, tries to push me off of her  
8 and so I end up shooting her because I really want the shoes.  
9 Now, that wasn't what I intended when I went into it, but  
10 obviously at the time I pulled that trigger and shot her to  
11 take those shoes, that was my intent. Do you get how that  
12 intent can change?

13 A. Yes, ma'am.

14 Q. So it's your intent at the time that you're  
15 committing that offense, whatever that may be. And it can be  
16 formed like that. But what we're not talking about is  
17 anything -- a death that is caused by an accident or a mistake  
18 or because of mental disease or defect the person doesn't know  
19 the difference between right or wrong, or because some sort of  
20 self-defense or defense of another person would apply. We're  
21 talking about that person did what they meant to do, an  
22 intentional killing, plus that something else to make it  
23 capital murder.

24 And so I get completely what you're talking  
25 about in your questionnaire whenever you're talking about then

1 you deserve the death penalty. And a lot of jurors talk in  
2 terms of, you know, what somebody may or may not deserve. And  
3 we do that a lot at home, do we not, when we're watching TV  
4 and, you know, you'll see something on TV and say, wow, that  
5 person deserves the death penalty. Or, you know, you may see  
6 something else that you say, well, that deserves this penalty  
7 or that penalty. And we can arm chair quarterback at home  
8 pretty well, but I'll tell you that the jurors are never going  
9 to be called upon in this process, because it's very much of a  
10 legal process and I know you saw that before in your civil  
11 service as a juror -- is that the jurors are never going to be  
12 called upon to say who deserves the death penalty or who  
13 deserve a life sentence because while we're real good at that,  
14 that's not what the law is.

15           The way we arrive at the verdict in the  
16 sentencing phase, whether it's going to be life without parole  
17 or a death sentence after somebody's found guilty of capital  
18 murder, is your way you answer these special issues. Does that  
19 make sense?

20           A.     Yes, ma'am.

21           Q.     Because we separate them out not based on who  
22 deserves it, but the State of Texas says it's going to be based  
23 on what you're more than likely going to do in the future down  
24 the road because we don't execute people for what they've done.  
25 We execute them for what they're more likely going to do in the

1 future. That they're going to continue to be a constant threat  
2 in society. Did you get that distinction when you were kind of  
3 looking at the pamphlet?

4 A. Yes.

5 Q. And we'll go into that more in depth. We, of  
6 course, ask you to fill out this questionnaire before you knew  
7 the law about anything, so I know you're just talking about  
8 your thoughts and feelings surrounding the death penalty and  
9 there is nothing wrong with that. I see that you do have  
10 strong feelings in favor of the death penalty; is that right?

11 A. Yes.

12 Q. And nobody is going to try to change your feelings  
13 or beliefs. We don't ask you to -- when we're sending you  
14 through the metal detector, we don't say to check all your  
15 common sense and beliefs down at the courthouse door. You get  
16 to bring all that with you.

17 The thing about it is, the process we're doing  
18 right now is to make sure that if the Judge were to give you  
19 the law as it relates to a case like capital murder, that even  
20 though you have these strong feelings and beliefs regarding the  
21 death penalty, that you would still be able to follow the law  
22 and follow the process and not automatically arrive at any  
23 sentence that would be a death sentence, just because of your  
24 strong feelings and beliefs. Does that make sense?

25 A. Yes.



1 Q. Because we do have some jurors that come in here and  
2 say that they will always answer these questions in such a way  
3 that a death penalty will result because that's how strongly  
4 they feel about the death penalty. Can you see how that  
5 wouldn't be fair to the Defendant?

6 A. Yes.

7 Q. And then we've got other jurors that come in here  
8 and they're on the opposite end. They -- for whatever reason,  
9 because the death penalty does bring with it strong personal,  
10 moral, religious beliefs. Sometimes how we're raised, some  
11 jurors come in here and tell us that they're so opposed to the  
12 death penalty and think that it's absolutely wrong, that  
13 they're always going to answer these questions in such a way  
14 that a life sentence is going to result. Well, the State of  
15 Texas is entitled to a fair trial, too, so can you see how that  
16 wouldn't be proper either?

17 A. Right.

18 Q. And so we're just looking for jurors that can follow  
19 the law after it's been given to them and clearly -- like I  
20 said, we know you didn't know the law whenever you came in and  
21 just filled this out blankly. So let's talk a little bit about  
22 the law that would apply if you were to sit and serve as a  
23 juror, and then I'm going back to your questionnaire with a few  
24 questions I have.

25 A. Okay.

1 Q. There are certain principles of law that come up in  
2 every type of criminal case. It doesn't matter -- you probably  
3 didn't deal with these too much over in the civil courthouse,  
4 but I'm sure you've seen a lot of this on TV. It doesn't  
5 matter if we're talking about a shoplifting case in misdemeanor  
6 court or if we're talking about the capital murder where the  
7 State is seeking the death penalty, the Defendant on trial  
8 always has the presumption of innocence. Just because he's  
9 been indicted for the offense of capital murder doesn't mean  
10 he's guilty of anything because an indictment is nothing more  
11 than a sheet of paper, and it lets the State know what we've  
12 got to prove to the jurors and it puts the Defense on notice  
13 with what he's been charged with, and it really serves as a  
14 road map or checklist for the jurors so they can go through and  
15 make sure that the State of Texas dotted all their I's and  
16 crossed all their T's in the courtroom with what we've got to  
17 prove. Does that make sense?

18 A. Yes, ma'am.

19 Q. And so some jurors will tell us, well, you know  
20 what, if you've gotten to this process and you're in here  
21 selecting jurors on a death penalty, then I believe that where  
22 there's smoke, there's got to be some fire and he must be  
23 guilty of something or he wouldn't be sitting here. Can you  
24 see where that flies in the face of the law and the presumption  
25 of innocence?

1 A. Yes.

2 Q. And so if you were to sit and serve as a juror in  
3 this case, would you be able to give this presumption of  
4 innocence -- give this Defendant his presumption of innocence  
5 and wait until the State of Texas does our job in proving the  
6 elements in that indictment beyond a reasonable doubt?

7 A. Yes, ma'am.

8 Q. And as he sits here right now, you get it, he isn't  
9 guilty of anything?

10 A. Yes, ma'am, I do.

11 Q. Okay. Another important right is that the burden  
12 always rests solely over here at this table. You always look  
13 to the State to prove that stuff in the indictment. We're the  
14 ones that did the accusing, we better be the ones to do the  
15 proving. In the punishment phase, we're the ones saying that  
16 he is going to more than likely continue to commit criminal  
17 acts of violence that constitute him being a continuing threat,  
18 which is why we're seeking the death penalty. And so it's  
19 going to be our job, again, in Special Issue Number 1 to prove  
20 that stuff to you beyond a reasonable doubt. You never look to  
21 this table to prove that he's innocent, you know, because that  
22 would be backwards and wrong, right? You got to look to the  
23 ones doing the accusing. And you never look to this table to  
24 show that he's not going to be a danger in the future. You got  
25 to hold State to the burden and require us to prove it. And if

1 we fail, then it's a not guilty. If we fail in Special Issue  
2 Number 1, then the answer to that is no and a life sentence is  
3 proper. Could you only look to the State in proving what we  
4 have to prove and never shift it over here?

5 A. Yes.

6 Q. You could just require the State to do our job?

7 A. Yes, ma'am.

8 Q. And I say that because really under the law, the  
9 Defendant, he's done his job. And in trial, come the end of  
10 October, first of November, simply by showing up and being here  
11 in this courtroom, he will have done his job. They can work  
12 crossword puzzles or do whatever they want over there at that  
13 table. They're good lawyers. They're not going to, but the  
14 law doesn't require them to call witnesses. The law doesn't  
15 require them to cross-examine the witnesses we bring. And it  
16 certainly doesn't require them to bring any sort of evidence  
17 because you look to the State. And you would do that, right?

18 A. Yes, ma'am.

19 Q. Now, when I say it's our burden -- when you served  
20 on that civil trial, do you remember how -- what their level of  
21 proof was or their burden of proof was over there?

22 A. Yes.

23 Q. And was it something like slightly tipping the  
24 scales? Preponderance? Does that ring a bell?

25 A. Yeah, because they had to also prove their point

1 versus the other side. Pretty much how it's kind of going  
2 here.

3 Q. Okay. You're absolutely right. But with a civil  
4 trial, it's a lower burden of proof. You just have to be --  
5 slightly tip the scale --

6 A. Uh-huh.

7 Q. -- for one side or the other. Here, remember, you  
8 only look to the State to be bringing you that proof. And our  
9 burden is beyond a reasonable doubt. And it's the highest  
10 burden in our legal system, and we would want it to be, right?

11 A. Yes.

12 Q. If we're talking about a person's liberty and  
13 perhaps their life, then we want to be convinced beyond all  
14 reasonable doubt. Now, I can tell you under the law what it's  
15 not. It doesn't have a legal definition, but it's not  
16 100 percent certainty and it's not beyond all possible doubt  
17 because obviously, to know something like that, you would have  
18 to see it with your own eyes, would you not?

19 A. Yes, ma'am.

20 Q. Could you just hold the State to beyond a reasonable  
21 doubt in this case?

22 A. Yes, ma'am.

23 Q. But understanding it is a high burden?

24 A. Yes.

25 Q. And we've got to do our job.

1 Another important right is that the Defendant  
2 has a Fifth Amendment right, and I know you've probably heard  
3 of this one. Out there on the streets, they can say, hey, I  
4 plead the Fifth, you know, I don't want to talk to you, police  
5 officer, who's trying to stop me about this speeding ticket.  
6 You could say, I want my lawyer. Same holds true in this  
7 courtroom. A criminal defendant never has to testify. It  
8 doesn't matter if it's the guilt/innocence phase or the  
9 punishment phase, I can't call him to the stand to testify.  
10 His own lawyers can't say, you better get up there and tell  
11 that jury what you have to say. It's his decision and his  
12 decision alone.

13 Now, he has an absolute right to testify, if he  
14 chooses to, but he has that absolute right not to testify. And  
15 here's what the law would tell you, that if a defendant chooses  
16 not to testify, regardless of what phase, the guilt/innocence  
17 or the punishment phase, you can't take that fact and use it as  
18 evidence of anything because we don't know why. There's a  
19 whole host of reasons, as you might imagine, why somebody  
20 chooses not to testify.

21 First and foremost, his lawyers may tell him,  
22 well, the State didn't do their job, so the jury is going to  
23 have to return a verdict of not guilty and so why in the world  
24 would you get up there and subject yourself to that when the  
25 jury's going to have to return a verdict of not guilty? Or it

1 could be they're not well spoken. They might be fearful that  
2 they're going to incriminate themselves, if not of the case  
3 they're on trial for, but of maybe something else. There can  
4 be a whole lot of reasons and the law recognizes that and  
5 that's why it says that you can't use it as evidence of  
6 anything if they choose not to. If the Defendant chose not to  
7 testify, can you guarantee us that you wouldn't hold it against  
8 him?

9 A. Yes.

10 Q. You wouldn't use it as evidence of anything?

11 A. No.

12 Q. Okay. Now, another important principle or thing  
13 that you would have to do if you were to sit and serve as a  
14 juror, and I think you get this, is that it would be your job  
15 to listen to and evaluate all the evidence and listen to the  
16 witnesses and determine whether you believe all, part, or none  
17 of what somebody is telling you.

18 Now, just because a police officer walks in  
19 here, it doesn't matter how decorated his uniform is and that  
20 he carries a badge and a gun, we know there are some good  
21 officers and some bad officers, right?

22 A. Right.

23 Q. And so simply by virtue of the fact somebody's a  
24 police officer, the law says that you've got to start out all  
25 witnesses, doesn't matter what profession they're in -- a

1 priest, a prostitute, a police officer -- you've got to start  
2 them out all the same and wait until you hear what they have to  
3 tell you before you start giving them a leg up or giving them a  
4 leg down judging their credibility. Would you be able to wait  
5 until you hear what a police officer has to tell you before you  
6 automatically say they're going to be more truthful?

7 A. Yes.

8 Q. Okay. And you recognize that in your questionnaire.  
9 And so those are all of the important rights that the jurors  
10 would have to understand and agree to follow if you were to sit  
11 and serve as a juror. And I think you get all those.

12 Let's talk a little bit more about that  
13 indictment. We are required to prove to you every single thing  
14 in there. There are no technicalities. So if we fail to prove  
15 even one of them, no matter how insignificant it may seem or be  
16 in light of everything else you heard, the proper verdict would  
17 have to be not guilty as to the charged offense if we fail in  
18 our proof.

19 Now, let me give you an example of what I'm  
20 talking about, and we're not going to be talking about the  
21 facts of this case because the law doesn't allow either side to  
22 talk about this case. But let's say our indictment said that  
23 we were going to prove capital murder against the Defendant,  
24 and it was an intentional killing in the course of a robbery,  
25 in our indictment, but let's say you're sitting on that jury,



1 and you believe, as do the other 11 jurors, that we did get it  
2 right in terms of it is this Defendant, he did do this  
3 intentional killing, and it happened against the victim on the  
4 day we said it happened and it happened in Dallas County, but  
5 you never heard any evidence about a robbery taking place. You  
6 just believed beyond a reasonable doubt that this Defendant did  
7 an intentional killing. In fact, you don't hear about a  
8 robbery. You hear about that it was a killing in the course of  
9 a sexual assault, a different felony than what we've put in our  
10 indictment. Do you get how those two don't jive?

11 A. Right.

12 Q. They're not the same.

13 A. No.

14 Q. And so as a result of that, your verdict as to  
15 capital murder would have to be, if you're following your oath,  
16 not guilty, right?

17 A. Right.

18 Q. And would you be able to hold us to that, and if we  
19 fail in our proof, could you return a verdict of not guilty?

20 A. Yes, ma'am.

21 Q. No matter how distasteful it may be? If I don't do  
22 my job, I may be looking for a new one, but it's not the  
23 jurors' job to give me a leg up or help me out, right?

24 A. Right.

25 Q. And you wouldn't do that, help us out? No?

1           A.     No.

2           Q.     Okay. Because it's just your job to render a true  
3 verdict according to the law and the evidence, those two things  
4 only.

5                     Now, in that situation I'm telling you about,  
6 the Defendant still may be guilty of something because  
7 remember, you believe beyond a reasonable doubt he did an  
8 intentional killing. You just didn't believe that extra part  
9 to make it capital murder. And so in that situation you may be  
10 given the option to convict the Defendant of that lesser  
11 offense of murder, just a plain murder. In that situation life  
12 without parole would be off the table. The death penalty would  
13 then be off the table, obviously, because we're talking about a  
14 regular murder. And you would be looking at a range of  
15 punishment. Anywhere from five to 99 years or life is what our  
16 legislature has said is the proper punishment range for the  
17 offense of murder.

18                    Now, after you've heard all the evidence in the  
19 case -- the situation I'm telling you about, if you thought  
20 that the proper thing to do after you heard everything was to  
21 then give a sentence of five years in prison, could you give a  
22 sentence of five years in prison for murder if you thought that  
23 was the right punishment?

24           A.     Yes, if that was the right punishment.

25           Q.     After you've heard everything?

1 A. Yes, ma'am.

2 Q. And if you thought a life sentence was the  
3 appropriate punishment after you heard all of the evidence,  
4 could you then give a life sentence?

5 A. Yes, ma'am.

6 Q. And anywhere in between?

7 A. Yes.

8 Q. Because in order to be qualified to sit and serve as  
9 a juror, you just have to be able to keep an open mind, and  
10 your mind can't be foreclosed to either end of that range. And  
11 you would be able to do that, right?

12 A. Yes, ma'am.

13 Q. Okay. And so now we've talked about the scenario.  
14 Obviously, if somebody is found not guilty altogether, then we  
15 all go home, including the Defendant. If you got the lesser of  
16 murder, that's what we just talked about.

17 Now, if somebody is found guilty of the offense  
18 of capital murder, there's two phases to a criminal trial.  
19 That first phase, you just get to see a snapshot, just the day  
20 in question, just the stuff in our indictments and go through  
21 and say did we prove those things in the indictment. It's not  
22 proper and the law doesn't permit us to talk about a  
23 Defendant's criminal history or lack thereof or their character  
24 or background or anything like that in that first phase of the  
25 trial because it's just did the State prove what they alleged

1 happened. Does that make sense?

2 A. Yes, ma'am.

3 Q. Now, in the second phase of the trial, if you find  
4 the Defendant guilty of capital murder, you get to hear  
5 additional evidence. You get to consider what you heard and  
6 what you found the Defendant guilty of in that first phase of  
7 the trial, but you also might hear a criminal history, or a  
8 lack thereof. You may hear a person's character, background,  
9 all sorts of things that you get to hear additional in that  
10 punishment phase that you didn't get to hear in the  
11 guilt/innocence phase. And whenever we're going to the  
12 punishment phase, just like the Defendant as he sits here now  
13 and as he'll sit there at his trial, unless and until we do our  
14 job and prove it beyond a reasonable doubt, he has that  
15 presumption of innocence, remember?

16 A. Yes.

17 Q. The law says that the presumed punishment for  
18 capital murder defendants is going to be life without parole.  
19 The vast majority of defendants convicted of capital murder are  
20 going to receive that sentence, life without parole, because  
21 remember, we reserve that death penalty for those few that are  
22 going to continue to be a danger in our society, right?

23 A. Yes, ma'am.

24 Q. And so could you give the Defendant the presumption  
25 that a life without parole is proper, unless and until we

1 answer these special issues in a certain way?

2 A. Yes, ma'am.

3 Q. Okay. Looking at Special Issue Number 1 we're going  
4 into this knowing that the best possible punishment -- because  
5 where we are when you're answering these is, is you've found  
6 the Defendant guilty of an intentional killing in the course of  
7 a robbery. That -- that's what you would have done when you're  
8 looking at these.

9 So Special Issue Number 1 says whether there is  
10 a probability, and under the law that just means more likely  
11 than not. It's not a possibility because anything would be  
12 possible. And it's not something that we're saying will happen  
13 because obviously, we can't know with all certainty. Again,  
14 it's kind of like that 100 percent. We can't know with  
15 100 percent certainty. So what the law would say is more  
16 likely than not that the Defendant would commit criminal acts  
17 of violence.

18 Now, criminal acts of violence is something like  
19 that beyond a reasonable doubt. It doesn't have a definition.  
20 It's whatever criminal acts of violence to you would constitute  
21 that person being a continuing threat. Some jurors tell us if  
22 I were to haul off and hit Andrea right now, that, yeah, that  
23 would be an assault, so that would be a criminal act of  
24 violence to them. Other jurors tell us that spitting on a  
25 guard in a given situation might be a criminal act of violence

1 to them. I'm not going to pin you down and ask you what it is  
2 to you today. You'll just know it if you see it, but I -- I  
3 can tell you what it's not. The law doesn't tell us, State,  
4 you better prove more likely than not this Defendant is going  
5 to kill again. You better prove more likely than not that he's  
6 going to do another robbery or rape. It doesn't pigeonhole us  
7 into the type of criminal act of violence that we've got to go  
8 about proving. Does that make sense?

9 A. Yes, ma'am.

10 Q. But it does say criminal acts, more than one,  
11 violence that would constitute him being a continuing threat to  
12 society. Now, remember, at this point in time you have found  
13 the Defendant guilty of an intentional killing in the course of  
14 a robbery -- if we're looking at these --

15 A. Uh-huh.

16 Q. And the best possible punishment he can get is life  
17 without parole, and that's the presumed punishment. So where  
18 is he going to be when we're talking about society, when you're  
19 looking at answering that?

20 A. Number 1 or Number 2?

21 Q. Number 1.

22 A. Number 1. Just in general?

23 Q. What do you think we're talking about when we say  
24 society?

25 A. The outside world.

1 Q. That's what most people think of, I'll tell you  
2 that. But if you found the Defendant guilty of capital murder,  
3 the best punishment he can hope for is to be in prison for the  
4 rest of his life. And life without parole means exactly that.  
5 He ain't getting out. He's going to die there.

6 And so when we're talking about society, it's  
7 wherever the Defendant finds himself, but, you know, honestly,  
8 if you've found him guilty, then the best he can do is going to  
9 be prison society, right?

10 A. Right.

11 Q. And so really what Special Issue Number 1 is talking  
12 about, that more likely than not this person is going to  
13 continue to be a danger even in prison. Do you get that?

14 A. Yes, ma'am.

15 Q. Do you think there are people in prison that deserve  
16 the same level of protection as you and I do?

17 A. Yes.

18 Q. And I mean, you've got other inmates, some of which  
19 are trying to do their time peacefully. You've got guards just  
20 trying to earn a living. You've got ministers that go in there  
21 and try to talk to some of them. You've got nurses, doctors.  
22 You've got other family members that are going to visit their  
23 loved ones there. And so can you see how that is in and of  
24 itself its own society?

25 A. Yes.

1 Q. Do you think that prison is a dangerous place, or  
2 could be?

3 A. It could be.

4 Q. Have you ever visited a prison?

5 A. Yes.

6 Q. You have? Were you visiting someone that you know  
7 or were you just on a tour?

8 A. Visiting someone.

9 Q. Okay. And so you in and of -- whenever you were  
10 there visiting, you would be part of that society, right?

11 A. Yeah.

12 Q. And certainly you would want to be protected while  
13 you were there?

14 A. Yes.

15 Q. And so that's why we have Special Issue Number 1  
16 because do you think there are those individuals that still  
17 more likely than not are going to be a danger even in prison?

18 A. Yes.

19 Q. There are those people. How do you think that we  
20 could -- or what would be important to you in answering Special  
21 Issue Number 1?

22 A. As far as like --

23 Q. Based on evidence that could be presented to you,  
24 what's important, in your mind?

25 A. In my mind, basically if the person was found, you



1 know, guilty, and they got the lesser charge and they did go  
2 into the society of prison, that they had like remorse and they  
3 wanted to do better or not harm anybody else, basically.

4 Q. Okay.

5 A. But if they did -- were guilty, and they didn't have  
6 any remorse, no feelings for humanity, then the death penalty  
7 would be the more reasonable decision.

8 Q. Okay. And remember, when we talk about that this is  
9 a process, that there are no automatics. Just because somebody  
10 is guilty of capital murder, just because they've done an  
11 intentional killing in the course of a robbery --

12 A. Uh-huh.

13 Q. -- no matter how bad that offense may or may not be,  
14 you know, to the jurors that you found them guilty of, you  
15 don't automatically assess the death sentence or we would have  
16 no reason to have a punishment phase and no reason --

17 A. Right.

18 Q. -- to answer these, right?

19 A. Right.

20 Q. Because there's two possible punishments, with life  
21 without parole being the presumed punishment -- it should be,  
22 unless and until we do our job --

23 A. Uh-huh.

24 Q. -- and prove Special Issue Number 1 to you. I'll  
25 tell you, some jurors tell us exactly what you're talking

1 about, which is if I don't see any remorse, then I just -- I  
2 don't know. Now, you can look to the circumstances of the  
3 offense that you found him guilty of. The law permits you to  
4 do that. You can look to what was going on before that  
5 offense, during that offense, and how the Defendant acted after  
6 that offense, but remember, the Defendant has that important  
7 Fifth Amendment right where he doesn't have to testify and you  
8 can't require him to testify. Now, if you hear from him,  
9 obviously you may know whether or not they're remorseful. But  
10 the law also isn't going to permit some of his family members  
11 to get on the stand and say, oh, he feels really bad about what  
12 he did because that would be hearsay.

13 A. Yes.

14 Q. And so even if you don't hear from -- or how do you  
15 think you would be able to determine whether or not somebody  
16 was genuinely remorseful or they were just kind of giving lip  
17 service to it, or do you think that happens sometimes?

18 A. It happens sometimes, but some -- you can also tell  
19 in body language, the way a person acts.

20 Q. Okay. And do you think some people could be on  
21 their very best behavior when they're in here for their  
22 judgement day?

23 A. Yes.

24 Q. Okay. So there's a whole host of things you may  
25 have to be looking to in the evidence, right?

1 A. Yes.

2 Q. But it's got to be based on the evidence because  
3 remember, it's a process. There are no automatics, and so  
4 you've got to look at what you do have. You can't require him  
5 to prove that he's not going to be or that he is remorseful  
6 because that might be requiring him to testify, right?

7 A. Right.

8 Q. And we can't do that.

9 A. Huh-uh.

10 Q. Do you think that it's possible -- because, you  
11 know, really when we're looking at -- down the road into the  
12 future, we're really asking you to get out your crystal ball  
13 and look at it and say more likely than not, based on the  
14 evidence you're seeing in that case, whether or not somebody is  
15 going to commit criminal acts of violence that are going to  
16 constitute them being a continuing threat even in prison. Do  
17 you think that's something that it's possible for the State to  
18 prove to you beyond a reasonable doubt?

19 A. Yes.

20 Q. Okay. Just based on what you hear or see in the  
21 evidence?

22 A. Right.

23 Q. And remember, the law does say you can look solely  
24 to the offense for which you've found them guilty of. You just  
25 can't automatically say that, oops, just because they did an

1 intentional killing in the course of a robbery, I'm always  
2 going to answer that yes.

3 A. Right.

4 Q. Does that make sense?

5 A. Yes, ma'am.

6 Q. You've got to look at it in terms of the evidence  
7 and say, well, based on that, are they going to commit criminal  
8 acts of violence that are going to constitute them being a  
9 continuing threat.

10 Now, if looking at Special Issue Number 1, the  
11 answer to that is no, we fail in our proof and we don't prove  
12 that to you, then the trial stops and the proper punishment is  
13 life without parole. If, however, we prove that to you, that  
14 the answer is yes, then your job as a juror is not done. The  
15 State of Texas's job is done because we don't have a burden of  
16 proof as it relates to Special Issue Number 2. And remember,  
17 the Defense, you never look to them to prove anything to you.  
18 And so they don't have a burden of proof as it relates to  
19 Special Issue Number 2 either. It's just you look at  
20 everything that you do have in the evidence, everything in the  
21 guilt/innocence phase, everything in that punishment phase, you  
22 take another look at it again in relation to Special Issue  
23 Number 2, and decide whether taking into consideration all of  
24 the evidence, including the circumstances of the offense, the  
25 Defendant's character and background, and the personal moral

1 culpability of the Defendant, whether or not there is a  
2 sufficient mitigating circumstance or circumstances to warrant  
3 that a sentence of life imprisonment without parole rather than  
4 a death sentence be imposed. Now, that's a lot of words. But  
5 basically it's just asking you not to disregard or turn a blind  
6 eye to any piece of evidence that you heard in the trial.

7 Well, some jurors tell us that what may be -- by  
8 mitigating, what we're talking about is something that would  
9 lessen the Defendant's responsibility, lessen his potential  
10 exposure for punishment. Does that make sense?

11 A. Yes.

12 Q. Some jurors tell us that what may be lessening the  
13 Defendant's responsibility to them, another juror may say, no,  
14 I think that makes them worse. And what I mean by that is,  
15 some jurors tell us that being intoxicated on drugs or alcohol  
16 at the time of the offense -- you know, high or intoxicated may  
17 be lessening their responsibility to them. And other jurors  
18 say, no, no, no, if you do two things, you voluntarily ingest  
19 that substance that's making you high or intoxicated, then you  
20 go out and commit a crime, not only are you guilty, but I think  
21 that makes you worse. And that's perfectly fine.

22 What the law would say is if you hear evidence,  
23 such as a person's upbringing, circumstances of their birth,  
24 their educational background or lack of a good educational  
25 background, or a bad home life or being abused physically or

1 sexually as a child -- and, again, we -- we're not talking  
2 about facts of this case. We're just saying things that  
3 sometimes come up in the punishment phase -- that those would  
4 just be things that you would consider because the law would  
5 require you to do that in Special Issue Number 2 -- is just  
6 listen to it all. And after you listen to it all, then you  
7 determine if there's something in your mind that lessens the  
8 Defendant's responsibility. And then if there was something  
9 that lessened his responsibility or role based on the evidence,  
10 then you would have to look at it and say, but, after I found  
11 this person guilty of an intentional killing in the course of a  
12 robbery and after I've found that they're going to be a danger,  
13 even in prison, is this something so sufficiently mitigating to  
14 me, something, you know, that really lessens his  
15 blameworthiness to the degree that this should be a life  
16 sentence now, rather than a death sentence. Does that make  
17 sense?

18 A. Yes, ma'am.

19 Q. And you don't have to think of something right now  
20 in your mind that -- because obviously, you're talking about a  
21 pretty bad person. If you found him guilty of capital murder,  
22 and if you found they're going to still be a danger even in  
23 prison, it's going to have to rise to the level of being pretty  
24 darned mitigating -- sufficiently mitigating to you, such that  
25 you're going to make this a life sentence. But what the law

1 would just say is, if you hear something in the evidence, even  
2 though you've found them guilty of capital murder, even though  
3 you found they're a future danger, would you answer Special  
4 Issue Number 2 yes, if based on the evidence something said to  
5 you that he was deserving of a life sentence?

6 A. Yes.

7 Q. Now, if you don't hear anything, then the answer to  
8 that is no. And, now, again, with Special Issue Number 2, you  
9 know, people will tell us, well, the moral culpability of the  
10 Defendant, how am I going to know that if he doesn't take the  
11 stand and testify. Well, what Special Issue Number 2 would say  
12 is, again, you can't require him to do that. But if you hear  
13 it in the evidence, would you answer that yes. Again, if you  
14 don't hear it, then the answer is no, if you don't hear  
15 anything.

16 A. If I don't hear like about any moral -- if I don't  
17 hear it, I wouldn't consider.

18 Q. You just don't hold it against him --

19 A. No.

20 Q. -- that he doesn't testify, right?

21 But if you heard something in the evidence, even  
22 if he doesn't testify, but there was something about the  
23 evidence to you that says he's deserving of a life sentence,  
24 would you answer that yes?

25 A. Yes.

1 Q. Okay. Do you have any questions about Special Issue  
2 Number 2, because we didn't always have Special Issue Number 2.  
3 The reason we have it is because if you're abiding by your oath  
4 and rendering a true verdict according to the law and the  
5 evidence, jurors may find that they have to, because following  
6 that checklist, the State of Texas proves beyond a reasonable  
7 doubt that the Defendant is guilty of capital murder, then  
8 we're entitled to verdict of guilty on that. And then jurors  
9 in looking at the evidence and in following their oath, they  
10 may have felt required to, based on the law and the evidence,  
11 to find that, yeah, everything that I saw and heard, he's more  
12 likely than not going to be committing criminal acts of  
13 violence that constitute him being a continuing threat. And  
14 before we had Special Issue Number 2, jurors had no way. They  
15 had no vehicle of saying, but, wait, there was still something  
16 about the Defendant or there was still something about that  
17 offense that says to me that that should be a life sentence.  
18 Do you see that Special Issue Number 2 is pretty important?

19 A. Yes, ma'am.

20 Q. And so it gives the jurors a way, but it's got to be  
21 based on the evidence. And I see on Question Number 39, page  
22 6, where you recognize the types of things that we're talking  
23 about that can play a factor in some circumstances. You see on  
24 page -- Question Number 39 --

25 A. Yes.



1 Q. -- where you're talking about those exact things  
2 that we're talking about you may hear in Special Issue Number  
3 2?

4 A. Yes.

5 Q. And just because they may be a factor in one case,  
6 doesn't mean they're going to be a factor in another. And just  
7 because you hear evidence of it, doesn't mean that it's going  
8 to be sufficiently mitigating to you to make it a life  
9 sentence. It's just if you hear it, would you do it? Because,  
10 remember, it's -- there's no automatic answers.

11 A. Yes.

12 Q. Okay. In looking, again, at your questionnaire, I  
13 just want to ask you a couple of things. Let me first tell you  
14 where we are today. Obviously, the jurors have to listen to  
15 and evaluate the evidence at the time of the trial because  
16 you're not going to hear anything today and we're not going to  
17 ask you how you would vote regarding anything. But I will tell  
18 you where we are is that my boss, Craig Watkins, has decided  
19 that we are seeking the death penalty against that man down  
20 there at the end of the table, Matthew Lee Johnson. It's not  
21 something he's still thinking about or that he may change his  
22 mind about. It's our goal at the end of the day, and we  
23 believe we have the quality and the quantity and the type of  
24 evidence that will cause the jurors to convict Matthew Lee  
25 Johnson of capital murder.

1                   And then going on into that punishment phase,  
2 again, we believe we have the quality and the quantity and the  
3 type of evidence that are going to cause the jurors to answer  
4 these special issues yes and then no, that will cause the Judge  
5 to sign essentially a death warrant -- a warrant for his death.  
6 And at that point in time he will be taken to Huntsville and at  
7 some point -- date in the future, taken to the death chamber,  
8 laid on a gurney, his arm extended, needle inserted into his  
9 arm whereby lethal injection will be pumped into his body until  
10 the point in time where he's pronounced dead. And I don't tell  
11 you that to be morbid or gruesome. It's just how we kind of  
12 started out talking about the process. And we can armchair  
13 quarterback at home all day long. Sometimes jurors, when they  
14 get in there and they recognize and realize that we're talking  
15 about this human being here at the end of the table who has a  
16 family who loves him just like you and I do and he puts on his  
17 pants every day just like you and I do, they say, wait, I might  
18 better take a step back. I don't know how I feel. How do you  
19 feel about participating in this very real process?

20           A.     I feel okay.

21           Q.     You do?

22           A.     (Nods head up and down.)

23           Q.     Okay. And if the State proves to you what we're  
24 setting out to prove beyond a reasonable doubt, and if we  
25 proved to you these things in Special Issue Number 1 and your

1 answer to that is yes and you go on to consider everything in  
2 Special Issue Number 2 and your answer is no and that results  
3 in an execution date being set for this Defendant, down the  
4 road you may be with family and friends -- and I know I saw  
5 that you've got some family members that believe only God can  
6 judge, that it's not our job to be participating in this sort  
7 of process and making these calls and doing this sort of thing.  
8 If you were to be sitting around your family and that date  
9 arrived and you know that but for your decision -- because it  
10 has to be unanimous before he receives the death penalty -- but  
11 for your decision and but for your hand in that, this man  
12 wouldn't be executed, are you going to have any problem with  
13 that, living with that, and being with these family members  
14 that maybe don't believe --

15 A. No.

16 Q. -- like you do?

17 A. No.

18 Q. You'd still be all right with that?

19 A. Yes, ma'am.

20 Q. Okay. And I also see in your questionnaire that  
21 you, yourself have been a victim of family violence type stuff;  
22 is that right?

23 A. Yes.

24 Q. Is that on one situation or more than one?

25 A. One situation.

1 Q. Okay. And as a result of that, did you have to use  
2 the services here of the D.A.'s office or did you have to meet  
3 a prosecutor?

4 A. I used the services here at the court.

5 Q. Okay. And was that in response to the criminal  
6 proceeding, as well as a protective order?

7 A. It was just a protective order.

8 Q. Just a protective order?

9 A. Yes.

10 Q. Okay. Was there anything about that experience that  
11 left a bad taste in your mouth or that you think you would  
12 bring it into your listening to and evaluating the evidence in  
13 this trial and hold it against either the State or the Defense?

14 A. No.

15 Q. You can separate those two out?

16 A. Yes.

17 Q. Okay. Now, I do see on Question Number 52 where we  
18 asked you if you or your spouse or any family members, close  
19 personal friend, have ever been accused or arrested or  
20 convicted of an offense. And you checked no at first, and then  
21 scribbled it out and put yes, but you didn't list for us who  
22 the individuals were you were thinking of.

23 A. Forgot to go back and write that in.

24 Q. That's all right. Do you mind telling us about that  
25 now?

1 A. I have an uncle that was in prison.

2 Q. For what offense, if you know?

3 A. I was a young child. I was 11 at the time when he  
4 went, but he got out in '04, I believe.

5 Q. Okay.

6 A. I can't remember --

7 Q. You don't know what the crime was he was accused of?

8 A. I can't remember what he was accused of.

9 Q. Do you think it was for something like we're sitting  
10 here on today or definitely not?

11 A. No.

12 Q. Okay. Anything about that experience with your  
13 uncle having been incarcerated that's going to affect you here  
14 today?

15 A. No.

16 Q. Okay. Is that who you went and visited or was it  
17 someone else?

18 A. Yes.

19 Q. Okay. And do you still keep in touch with him now  
20 that he's out?

21 A. Yes.

22 Q. All right. Now, what about any other person that  
23 you were thinking of with relation to 52?

24 A. I have two brothers that's -- I have a brother  
25 that's in here now, and his charge, I think, is assault, maybe.

1 Q. Okay. He's currently in Lew Sterrett?

2 A. Yeah.

3 Q. All right. And is he waiting on trial, or has he  
4 been punished, do you know?

5 A. I have no idea. I think they kind of just picked  
6 him up like last Thursday or something like that, so --

7 Q. Okay. And is he a brother that you keep close  
8 contact with or not so much?

9 A. Yeah. My mom has five kids. I have four brothers,  
10 so we're kind of a close-knit --

11 Q. Tight family?

12 A. -- family, yeah.

13 Q. Okay. Anything about the fact that your brother has  
14 pending charges right now that you would hold against the State  
15 or the Defense or do you think -- I know it's kind of fresh and  
16 new, but has he been treated fairly thus far?

17 A. Yeah, he's -- I mean --

18 Q. To your knowledge?

19 A. Like I feel if you do something to someone -- I  
20 mean, if it's proven against you, then you have to, you know,  
21 deal with the consequences that you did. Can't do anything but  
22 pray for him and, you know, keep going.

23 Q. Certainly. But it's certainly important that  
24 everybody is entitled to that fair process.

25 A. Yeah.

1 Q. And that's what both sides, as well as the Judge,  
2 try to make certain happens and so I just want to make sure  
3 there's nothing --

4 A. No.

5 Q. -- in that background that has affected you.  
6 Anybody else, family members, friends?

7 A. I have another brother, but he's not in jail or  
8 anything. He just has a charge. I think he's like on  
9 probation or something like that, for -- I think it's burglary  
10 of a habitat or something like that.

11 Q. Okay. And his probation is going okay?

12 A. Yes.

13 Q. And he's been treated fairly thus far?

14 A. Yes.

15 Q. That's good. What about the situation where you  
16 were a victim of family violence. Was anybody convicted of  
17 that offense?

18 A. No, I just got a --

19 Q. A protective order?

20 A. -- protective order. That was it.

21 Q. Okay. Are you still in contact with that individual  
22 that you had the protective order against?

23 A. We have children together, but we go through the  
24 child support court, so --

25 Q. Okay. To --

1 A. To kind of -- yeah, for the children.

2 Q. Move the children back and forth and for child  
3 support?

4 A. Yes.

5 Q. Okay. There was one other distinction that I wanted  
6 to make sure that you understood, and I kind of talked about  
7 this when we first started. Question Number 9 on page 2, when  
8 we asked you for what crimes do you think the death penalty  
9 should be available in Texas. You say people who plan to kill  
10 anyone. You remember I talked about how somebody's intent can  
11 be formed like that?

12 A. Yes.

13 Q. I may have one intent to take Andrea's shoes and  
14 then I change my mind whenever she's not giving them to me and  
15 I just have to kill her, or maybe I don't want her to run tell  
16 that I've stolen her shoes later. So my intent can change or  
17 my plan can change. In the state of Texas, we don't make a  
18 distinction between premeditated murder, like something that  
19 you're planning out, versus something that you just have the  
20 intent to do. It always got to be that intentional killing,  
21 but we don't have to plan about it beforehand. Does that make  
22 sense?

23 A. Yes.

24 Q. And then also, I think you mentioned here, again,  
25 best argument for the death penalty, proving the person meant



1 to do it and has no feeling about what he or she has done. And  
2 I certainly respect what you're talking about here today and  
3 what you were filling out here, that that's important to you.  
4 Again, it kind of goes back to that remorse. But understanding  
5 you feel that way, at no point in time are you going to require  
6 this Defendant to testify, right?

7 A. No.

8 Q. Okay.

9 MS. EVANS: Pass the juror.

10 THE COURT: Mr. Weatherspoon.

11 DEFENSE VOIR DIRE EXAMINATION

12 BY MR. WEATHERSPOON:

13 Q. Good morning, Ms. Jenkins. How are you today?

14 A. Good morning. I'm fine.

15 Q. As the Judge previously introduced me, my name is  
16 Kenneth Weatherspoon. I have a couple of questions to ask you,  
17 and I want to reiterate what Ms. Evans told you, that there's  
18 no such thing as a right answer or wrong answer. We just want  
19 to know how you feel. And one of the reasons why we had you  
20 fill out the questionnaire before we told you what the law was,  
21 was because we wanted your true feelings. Whatever they may  
22 be, we just want to know your true feelings. And I don't know  
23 if this helps you or not, but I've noticed you've been kind of  
24 leaning when you talk. That microphone -- you can pull it  
25 down.

1           A.     Okay.

2           Q.     That make you -- if that makes it easier for you.

3                   I want to start out by telling you that by  
4 coming down on June 21st and filling out this questionnaire and  
5 coming back today and answering these questions, you have  
6 fulfilled your civic duty, so I don't want you to think that  
7 whether you are on the jury or whether you're not on the jury,  
8 that you haven't performed your civic duty because everybody in  
9 this courtroom is grateful that you're here today, grateful  
10 that you showed up, grateful that you filled out the  
11 questionnaire, so you have done your civic duty already.

12                   Another thing I wanted to tell you is that even  
13 though we've spent a lot of time talking about punishment and  
14 the death penalty, by no means do I want you to take that as we  
15 over here at the Defense table think that Matthew Johnson will  
16 be found guilty. That's just the nature of the process. In  
17 fact, we believe Matthew Johnson will be found not guilty of  
18 capital murder, so I don't want you leaving here thinking just  
19 because the Defense spent a lot of time talking about the  
20 punishment phase, that we believe he'll get there. We don't  
21 believe you'll ever be called upon to answer those special  
22 issues because we don't think he'll be found guilty of capital  
23 murder, okay?

24           A.     Okay.

25           Q.     Now, I'm going to go over some of the things that

1 Ms. Evans went over, but you can understand me being a Defense  
2 attorney, we have a different take on what you've talked about  
3 with Ms. Evans. So I just want to go over it and make sure  
4 that we're all on the same page, okay?

5 A. Okay.

6 Q. Now, because of the nature of these proceedings,  
7 because we are where we are right now, do you have an opinion  
8 on Matthew Johnson's guilt or innocence? Some people tell us  
9 if we've gotten this far, he must have done something. Do you  
10 feel that way?

11 A. No.

12 Q. Okay. So you can give him the presumption of  
13 innocence?

14 A. Yes.

15 Q. And in your mind, as he sits here right now, he's an  
16 innocent man?

17 A. Yes.

18 Q. Now, I notice in going through your questionnaire,  
19 you have pretty strong feelings about the death penalty. Would  
20 that be fair?

21 A. Yes.

22 Q. And I believe in a couple of places you said you  
23 believe in an eye for an eye; is that correct?

24 A. Yes.

25 Q. Okay. Tell me what you mean by that.

1           A.     Like -- if say like somebody came and took something  
2 from me, and I'm -- like she said, she was going to fight back  
3 if she took her shoes. I don't know that that person is going  
4 to do something to me, but if they do harm me or, you know,  
5 make me, you know, immobile or disabled or whatnot, I would  
6 want justice for -- for my health. Or if it was another  
7 person, vice versa, I did it to them, they would want justice  
8 because if they had a job or if they had kids that they had to  
9 take care of, it would leave them in a bad spot.

10          Q.     Okay.

11          A.     So that's what I mean by eye for an eye -- you know,  
12 justice basically for that person.

13          Q.     So in -- in keeping with that train of thought, do  
14 you believe that in a situation of a death then, if you cause  
15 someone's death, that you should be put to death?

16          A.     I can keep an open mind because I have -- you have  
17 to know the facts first to get to that point.

18          Q.     So you're saying in that aspect, you may not  
19 consider an eye for an eye?

20          A.     Yeah.

21          Q.     Now, if you look -- I think it's Question 15, you  
22 told us, on page 3, you told us you believe in an eye for an  
23 eye, and then if you look at Question 23 on page 4, once again,  
24 you told us you believe in an eye for an eye and you said that  
25 in Question 23, specifically in reference to the death penalty,

1 that you believe in an eye for an eye; is that correct?

2 A. Yes.

3 Q. So you -- you wrote you believe in an eye for an  
4 eye, but now you're telling me that's not how you feel?

5 A. No. I -- I feel an eye for an eye, but if it's --  
6 if I can be, you know swayed or if that situation doesn't call  
7 for the same punishment, then -- then it won't be the same.  
8 You get what I'm saying?

9 Q. I think so. I think so. Well, let me ask you this.  
10 You -- you understand that capital murder is the intentional  
11 killing -- and for purposes of this trial, in the course of a  
12 robbery. It's not an accident. It's not a mistake. That you  
13 intended to kill the person, that was your goal to kill the  
14 person and you did kill the person.

15 A. Yes.

16 Q. So if you find someone guilty of a capital murder,  
17 do you think they deserve the death penalty?

18 A. Yes.

19 Q. Now, you understand that the law says that the  
20 presumed correct punishment in a capital murder case is life  
21 imprisonment without the possibility of parole. That's what  
22 the law says.

23 A. Okay.

24 Q. You understand?

25 A. Yes.

1 Q. But the way you feel is that if a person  
2 intentionally kills someone during the course of a robbery,  
3 that it's their goal to kill someone and they do kill someone  
4 during the course of a robbery, that that person deserves the  
5 death penalty?

6 A. I guess in my -- with my question here, answering  
7 it, I guess that's what I believe.

8 Q. Okay. And as a juror, is that the way you feel?

9 A. As a juror, no.

10 Q. Tell me how you distinguish between --

11 A. Because that's what I was explaining where like if  
12 it was -- like you said, it's not an accident, you know, it's  
13 intentional process or whatnot, then, you know, it's the death  
14 penalty. But if there are facts in the case, then it will go  
15 the other way to where it's life imprisonment, as I was  
16 explained to earlier.

17 Q. Okay. And when you say facts in the case --

18 A. Evidence.

19 Q. Okay. So if you find someone -- if you believe  
20 beyond a reasonable doubt that someone has intentionally killed  
21 someone during the course of a robbery, that they set out to  
22 kill that person and they did kill that person, you could keep  
23 an open mind to a sentence of life imprisonment?

24 A. Yes.

25 Q. Now, if you look at Special Issue Number 1, it talks

1 about whether there is a probability that the Defendant would  
2 commit criminal acts of violence that would constitute a  
3 continuing threat to society. And you understand that the  
4 State has the burden of proof to prove that to you?

5 A. Yes.

6 Q. And they have to prove it to you beyond a reasonable  
7 doubt?

8 A. Yes, sir.

9 Q. And when you were on the civil jury, they talked  
10 about preponderance of evidence; is that correct?

11 A. Yes.

12 Q. Okay. Well, in the law there's no definition of  
13 beyond a reasonable doubt -- what beyond a reasonable doubt  
14 means, but it's the very highest standard we have in law. I  
15 can't tell you what beyond a reasonable doubt is, but let me  
16 kind of help you by telling you -- talking about the other  
17 standards in law.

18 In a civil case like you were on, the standard  
19 is preponderance of the evidence, which means that one side has  
20 51 percent, the other side has 49 percent. The 51 percent  
21 wins.

22 In a child custody -- excuse me, in a parental  
23 termination case where the State is trying to take someone's  
24 kids away from them, the standard of proof is what's called  
25 clear and convincing evidence. And you would agree with me

1 that before the State should be allowed to take someone's kids  
2 away from them, that they should have a lot of evidence?

3 A. Yes.

4 Q. Would you agree with that?

5 A. Yes.

6 Q. Now, proof beyond a reasonable doubt as -- is a  
7 standard even higher than that. It's the highest standard we  
8 have in law. It doesn't mean 100 percent, and it means  
9 whatever that is to each individual juror, but it is the  
10 highest standard in law. And that's the -- what the State has  
11 to bring evidence to you to find the person guilty beyond a  
12 reasonable doubt, and also to prove Special Issue Number 1 to  
13 you.

14 Now, do you believe that the State could prove  
15 Special Issue Number 1 to you beyond a reasonable doubt, about  
16 the probability of what someone would do in the future?

17 A. Given the evidence, then most likely they probably  
18 could prove that Number 1.

19 Q. I don't follow you.

20 A. Well, for me -- like to answer it, I would have to  
21 know, you know -- like if I'm sitting on the jury and they say,  
22 you know, their evidence and facts on what -- you know, against  
23 the other party, if I feel that they proved their point to me,  
24 everything was -- they had their ducks in a row basically, then  
25 I could, you know, say yes to Number 1.



1 Q. Okay. So when you say when they prove what they had  
2 against the other person, are you talking about the victim of  
3 the crime?

4 A. Who they're representing -- well, they're trying to  
5 prove their case against the other party. That's what I'm  
6 talking about. Not the victim.

7 Q. The Defendant?

8 A. Yes.

9 Q. Okay. So you would require them -- or you could  
10 hold them to the burden of beyond a reasonable doubt in proving  
11 Special Issue Number 1 to you?

12 A. Yes.

13 Q. And if they didn't prove Special Issue Number 1 -- I  
14 know you talked about remorse and things of that nature. If  
15 you did not believe that the Defendant constituted a continuing  
16 threat, you could say no to Special Issue Number 1?

17 A. Yes.

18 Q. Okay. Now, you understand that before you even get  
19 to Special Issue Number 2, you have to have said yes to Special  
20 Issue Number 1?

21 A. Yes, I understand that.

22 Q. Okay. So if you don't find that person a continuing  
23 threat, you don't even get -- the probability that the  
24 Defendant would be a continuing threat, you don't get to  
25 Special Issue Number 2. You understand?

1           A.     Yes, I understand that.

2           Q.     Okay. And understanding that to get to Special  
3 Issue Number 2, you would have had to have found that the  
4 Defendant committed an intentional murder during the course of  
5 a robbery and also you believe beyond a reasonable doubt that  
6 there's a probability that the Defendant would commit criminal  
7 acts of violence that would constitute a continuing threat to  
8 society, you believe that there's a probability that the  
9 Defendant would commit -- would commit criminal acts  
10 constituting a continual threat to people within the prison  
11 society, other inmates, guards, workers, could you assess that  
12 person a life sentence knowing that he -- that there's a  
13 probability that he's a continuing threat?

14          A.     Yes, I could assess that.

15          Q.     So after believing that he is a continuing threat --  
16 the probability that he's a continuing threat and that he's  
17 committed an intentional murder, you could still give a life  
18 sentence?

19          A.     If he's not a threat to the society in a prison,  
20 then I can probably do that life imprisonment.

21          Q.     But now you understand that to find Special Issue  
22 Number 1 yes, you have to believe that he's a continuing  
23 threat.

24          A.     Right.

25          Q.     So you don't -- you don't get to Special --

1 A. Issue Number 2 --

2 Q. -- Issue Number 2 unless you believe he's a  
3 continuing threat.

4 A. Right.

5 Q. So knowing that, that you believe there's a  
6 probability that he's a continuing threat, you could still send  
7 that person back to prison knowing he's a threat?

8 A. Yes, if I --

9 MS. EVANS: Your Honor, I object. He's not  
10 asking it the proper way. It's if more likely than not.

11 THE COURT: I think he said that, but re --  
12 rephrase, please, Mr. Weatherspoon.

13 MR. WEATHERSPOON: Okay.

14 Q. (BY MR. WEATHERSPOON) If you think there's a  
15 probability that the Defendant would commit criminal acts of  
16 violence that would constitute a continuing threat to society,  
17 you believed beyond a reasonable doubt that there's a  
18 probability that the Defendant would commit criminal acts of  
19 violence that would constitute a continuing threat to society,  
20 you believe that --

21 A. Yes.

22 Q. -- could you send that person back to prison for a  
23 life sentence?

24 MS. EVANS: Your Honor, I would object because  
25 he -- he's not following -- he's not asking her if she could

1 follow the process and consider something mitigating with  
2 respect to Special Issue Number 2.

3 THE COURT: Sustained.

4 MR. WEATHERSPOON: Okay.

5 Q. (BY MR. WEATHERSPOON) Well, let me ask it this way.  
6 Once you find Special Issue Number 1 yes, okay, would you still  
7 consider mitigation?

8 A. Yes.

9 Q. If you turn to page 3, Question Number 12.

10 A. Question Number --

11 Q. Twelve, page 3. The death penalty is reserved for  
12 those defendants that are such a threat to society that even  
13 incarceration does not remove the probability of future violent  
14 acts. Do you agree? And you said you agree. And you went on  
15 to say because if they have not shown any feeling about their  
16 crime or plan the crime, then who is to say they won't kill  
17 someone while incarcerated. Tell me what you mean by that.

18 A. I'm saying -- like I was saying about the remorse --  
19 remorsefulness, if they don't have remorse for killing the  
20 person that was killed in the --

21 Q. In the robbery?

22 A. -- in the robbery, then who is to say when they go  
23 in there, someone upsets them or whatnot, they might end up  
24 reacting to that person the same way they did in the robbery.  
25 Or another situation, you know, if somebody skipping in line or

1 taking their food, whatever they got going on in there, you  
2 know, a -- a confrontation arises that leads to them possibly  
3 having to hurt that person, like I said, or kill them, so  
4 that -- that's what I mean by that answer.

5 Q. Something about what you just said -- have you ever  
6 discussed with any of the individuals that you spoke about,  
7 what it was like being in prison?

8 A. No, I've never asked.

9 Q. Okay.

10 A. When you said that, all I -- you know, TV --

11 Q. Okay.

12 A. -- TV is --

13 Q. That's how --

14 A. That's -- that's why I just said, you know, food or  
15 any -- that's why I said any kind of confrontations because I  
16 really don't know what goes on in there. I don't have an idea  
17 besides TV.

18 Q. Okay. How -- how many times did you visit your  
19 uncle?

20 A. I was young girl. When he went in, I was, I  
21 believe, 11.

22 Q. I mean, I know you didn't keep count, but just a --

23 A. I guess -- I'd say maybe -- I'll give roughly maybe  
24 ten because whenever my grandmother went, I would go with her.

25 Q. Okay. If you look at page 5, Question 32, what did

1 you mean by that? Because everybody lies about something.

2 A. Everybody tells white lies, so everybody lies about  
3 something. That's what I mean. Even if it's just, you know,  
4 to get by, or to -- like you might tell your kids, you know,  
5 it's Santa Claus, but, you know, there really is no Santa  
6 Claus. You are Santa Claus. That's a white lie that you tell  
7 all kids about Santa Claus, Easter bunny, so that's what I  
8 mean, everybody lies.

9 Q. Okay. Now, if you turn to page 6, Question 37: Do  
10 you think that a person convicted of capital murder can be  
11 rehabilitated? And you said: Yes, if the person has shown  
12 feeling for committing the crime. Tell me what you mean.

13 A. Again, it's where like -- you know, they explained  
14 to me now that, you know, they don't have to take the stand or  
15 whatnot to show remorse or whatnot, but if -- sometimes if  
16 you're a good judge of person -- a person's character or body  
17 language, then you can see if somebody really has remorse for  
18 what they did. That's what I mean by showing feeling, because  
19 in your body language, some people may not know about body  
20 language, but if you hold your fist like this or your arms  
21 closed like this (indicating), then you are closed to, you are  
22 -- you are closed to anything that's coming to you or being  
23 said to you. If you're kind of, you know, like this or whatnot  
24 (indicating), you're open to ideas, opinions, and so forth.  
25 That's what I mean by showing the feelings for committing the

1 -- the crime basically.

2 Q. Is that something that would be important to you in  
3 determining punishment?

4 A. You talking about the body language or --

5 Q. The remorse?

6 A. The remorse? No, because if -- I mean, like if she  
7 hit her, some people don't cry when they're hit. So that's not  
8 showing feelings. So I can't base it off of that. No, I  
9 can't. I won't.

10 Q. Well, let me ask you this. In looking at Special  
11 Issue Number 1, would you require the Defense to prove to you  
12 that the Defendant would not be -- that there's not a  
13 probability that the Defendant would commit criminal acts of  
14 violence that would constitute a continuing threat to so  
15 society?

16 A. No, because the burden of proof lies with the State,  
17 correct?

18 Q. Correct. So you wouldn't require the Defense --

19 A. (Shakes head from side to side.)

20 Q. And in Special Issue Number 2, even though neither  
21 side has a burden of proof in Special Issue Number 2, would you  
22 require the Defense to bring you evidence? Would you -- before  
23 you would answer Special Issue Number 2 yes, knowing that  
24 neither side has the burden of proof and knowing that the  
25 Defendant is not required to take the stand, nor is the Defense

1 required to bring you proof, would you still need to hear  
2 something from the Defense concerning Special Issue Number 2?

3 MS. EVANS: Your Honor, I would object because  
4 it's from wherever the evidence comes from. And there's case  
5 law that says that they can want to hear from the Defense, just  
6 not the Defendant.

7 MR. WEATHERSPOON: And I'm just asking the  
8 question.

9 MS. EVANS: Okay. As long as it's not -- it's  
10 improper because it's not --

11 MR. WEATHERSPOON: I haven't used it to  
12 challenge her for cause. I'm just asking the question.

13 THE COURT: Proceed.

14 Q. (BY MR. WEATHERSPOON) Did you understand my  
15 question, or do I need to repeat it?

16 A. Can you repeat it?

17 Q. Okay. You understand that the law says that neither  
18 side has the burden of proof on Special Issue Number 2,  
19 correct?

20 A. (Nods head up and down.) Correct.

21 Q. And you understand that the law also says that the  
22 Defense is not required to put on any evidence, nor is the  
23 Defendant required to testify concerning Special Issue Number  
24 2.

25 A. Correct.



1 Q. My question is, is that something that you would  
2 want to hear, or would you want to hear evidence concerning  
3 Special Issue Number 2 from some source?

4 A. No.

5 Q. When you said the last trial, you said you all were  
6 in court for a week?

7 A. Yeah, about a week.

8 Q. Okay. Pretty much the same schedule from 9:00 to  
9 4:30 or 5:00 every day?

10 A. Yes.

11 (Discussion between counsel off the record.)

12 VENIREPERSON: I'm cold.

13 Q. (BY MR. WEATHERSPOON) I thought that meant you  
14 weren't open to any questions. Okay. Just checking.

15 A. I'm sorry.

16 THE COURT: I'm glad you recognize that. I have  
17 my arms crossed all the time.

18 Q. (BY MR. WEATHERSPOON) Do you know anyone in the  
19 Dallas Police Department?

20 A. No.

21 Q. Garland Police Department?

22 A. No.

23 Q. Mesquite Police Department?

24 A. No.

25 Q. Dallas Fire Department?

1 A. No.

2 Q. Garland Fire Department?

3 A. No.

4 Q. Dallas Sheriff's Office?

5 A. No.

6 Q. Southwestern Institute of Forensic Sciences?

7 A. No.

8 Q. Anyone who works for the Texas Department of  
9 Criminal Justice?

10 A. No.

11 Q. I'm going to read you a list of names, and if you  
12 recognize any of these names, stop me, okay?

13 A. Okay.

14 Q. Scott Harris, Elizabeth Harris, Chris Harris,  
15 Kenneth Marecle, Amy Marecle, Michael Frank, Anna Lunceford,  
16 Jim Medley, Lawrence Denson, Jonas Lucht, Greg Mansell, Carina  
17 Pinzon, Digna Salmeron, Kelly Keeton, Daphne Johnson, Sherry  
18 Ann Clark, Amy Armstrong, Anthony Johnson, Alma Johnson,  
19 Courtney Johnson, David Williams, Danny Mullins, David  
20 Contente, Gioconda Verdaguer, Donald Dunlap, Johnny Wright,  
21 Monica Cajas, Michael Crosby, Roxanne Luttrell, Robbie Denmark,  
22 Quinlen Minor, Margaret Tatum, Jim Bertucci, John Harris,  
23 Timothy Proctor, Carlton Jenkins, Durian Allen, Gene Gathright,  
24 Manuel Turner, Andre Howard, Kenneth Lewis, or Sheldon Henry.  
25 You have to say yes or no.

1 A. Oh, I'm sorry. No.

2 Q. Okay. Do you have any questions that you would like  
3 to ask me?

4 A. No, sir.

5 Q. Do you have any questions about the process?

6 A. No, sir.

7 Q. Oh, I have one last question. If you look at page  
8 6, Question 37 -- excuse me, 36. When it had you to rank the  
9 objectives of punishment in the order of importance, it seems  
10 like at first you had one order and then you scratched it out  
11 and put a second order, put the rehabilitation first,  
12 punishment second, and deterrence third. Is that what you  
13 finally rested on?

14 A. Yes.

15 Q. And is that the way you feel?

16 A. Yes.

17 Q. Do you have any other questions -- any questions you  
18 would like to ask of me?

19 A. No.

20 Q. Thank you very much.

21 THE COURT: All right. Ma'am, we're going to  
22 ask you to just step out in the hall very briefly.

23 (Venireperson excused from courtroom.)

24 THE COURT: All right. Shonquidria Jenkins,  
25 Juror 1368A, any challenges for cause from the State?

1 MS. EVANS: No challenge.

2 THE COURT: Any challenge for cause from the  
3 Defense?

4 MR. WEATHERSPOON: None from the Defense.

5 THE COURT: All right. Thank you very much.

6 (Venireperson returned to courtroom.)

7 THE COURT: Ms. Jenkins, you have been qualified  
8 as a juror so the bailiff is going to take your photograph so  
9 that when the lawyers are reviewing their notes, they'll be  
10 able to put a face to a name. And then we'll let you know on  
11 October the 15th whether or not you will be a juror in this  
12 case.

13 (Venireperson 1368A, Shonquidria Jenkins,  
14 qualified.)

15 VENIREPERSON: Okay.

16 THE COURT: Thank you very much, ma'am.

17 (Venireperson excused from courtroom.)

18 THE COURT: We're on the record.

19 MS. MOSELEY: The State and the Defense agreed  
20 yesterday to excuse Jimmy Roberts, Juror Number 1372A. He was  
21 scheduled for this afternoon, but we made an agreement  
22 yesterday to excuse him so he is not here today.

23 MS. BERNHARD: And that is correct.

24 (Venireperson 1372A, Jimmy Roberts, excused.)

25 THE COURT: All right. If we could get Ms.

1 Benjamin, please.

2 (Discussion off the record.)

3 THE BAILIFF: All rise.

4 (Venireperson brought into courtroom.)

5 THE COURT: Be seated.

6 Good morning -- afternoon, Ms. Benjamin. How  
7 are you?

8 VENIREPERSON: I'm well. Thank you.

9 THE COURT: Good. Thank you for being here.

10 Ms. Benjamin, do you remember being down in the  
11 Central Jury Room in June of this year when I swore you in with  
12 the large panel?

13 VENIREPERSON: I do.

14 THE COURT: All right. Well, you're still  
15 operating under that oath, and you'll continue to operate under  
16 that oath until you're discharged as a potential juror.

17 VENIREPERSON: Okay.

18 THE COURT: We're going to be trying this case  
19 October the 28th through November the 8th. Has anything  
20 happened between when I swore you in back in June and now that  
21 would prevent you from being able to sit during those two  
22 weeks?

23 VENIREPERSON: No.

24 THE COURT: All right. Have you heard anything  
25 or seen anything or do you know anything about this case?

1 VENIREPERSON: Not at all.

2 THE COURT: All right. I'd like to introduce  
3 you to everyone. My name is Tracy Holmes, and I am going to be  
4 the presiding Judge for the trial.

5 Sitting between you and I is Darline LaBar.

6 VENIREPERSON: Okay.

7 THE COURT: She's the court reporter, and she's  
8 taking down everything that's being said. So as a courtesy to  
9 her, I'm going to ask you to try to remember to say yes or no,  
10 instead of nodding or shaking your head or saying uh-huh or  
11 huh-uh.

12 VENIREPERSON: That will work.

13 THE COURT: And the lawyers will remind you if  
14 that happens.

15 VENIREPERSON: Okay.

16 THE COURT: The lawyers for the State are Andrea  
17 Moseley.

18 MS. MOSELEY: Good morning.

19 THE COURT: And Elaine Evans.

20 VENIREPERSON: Hello.

21 MS. EVANS: Good afternoon.

22 VENIREPERSON: Hello.

23 THE COURT: The lawyers for the Defense are  
24 Nancy Mulder.

25 MS. MULDER: Good afternoon.

1 VENIREPERSON: Hi.

2 THE COURT: Catherine Bernhard.

3 MS. BERNHARD: Good afternoon.

4 VENIREPERSON: Hi.

5 THE COURT: And Kenneth Weatherspoon.

6 MR. WEATHERSPOON: Good afternoon.

7 VENIREPERSON: Hello.

8 THE COURT: And the gentleman to your far left  
9 is Mr. Matthew Lee Johnson. He's the citizen accused.

10 VENIREPERSON: Okay.

11 THE COURT: I give each side 45 minutes to talk  
12 to you. At the conclusion, we're going to ask you to step  
13 outside. If the lawyers decide you've been qualified as a  
14 juror, then we'll get your photograph and let you go. We will  
15 call you on October the 15th and let you know for sure one way  
16 or the other whether you will be a juror in this case.

17 VENIREPERSON: Thank you.

18 THE COURT: Is that enough time for you to get  
19 your affairs in order?

20 VENIREPERSON: That's enough. Thank you.

21 THE COURT: Okay. Have you had an opportunity  
22 to review the pamphlet and your questionnaire?

23 VENIREPERSON: Yes.

24 THE COURT: All right. Thank you very much.

25 MS. MOSELEY: Thank you, Judge.

1 WANDA BENJAMIN,  
2 was called as a venireperson by the parties, and after having  
3 been first duly sworn, testified as follows:

4 STATE VOIR DIRE EXAMINATION

5 BY MS. MOSELEY:

6 Q. Ms. Benjamin, first off, let me start off by saying  
7 we probably did not get off on the best foot with you since  
8 we've had you here since 8:30 this morning.

9 A. Absolutely.

10 Q. I apologize for that. Obviously, none of us knew  
11 that that was going to happen, but, you know, we had three  
12 jurors here and we have to go in the order by the juror number.  
13 And unfortunately for you, yours was third on the list this  
14 morning, and we just didn't get to you. So I appreciate you  
15 smiling and not coming into the courtroom throwing things or  
16 anything. I was afraid how I would -- how I would be if I were  
17 in your shoes, so I appreciate that.

18 A. Thank you.

19 Q. Let me tell you a little bit about why you're here  
20 today. I mean, when you were back here in June, we had you  
21 fill out this lengthy questionnaire, nosey questionnaire -- I  
22 mean, it was clear in your answers, some -- the time you  
23 thought we were just being nosey. I assure you that we are not  
24 being nosey just to be nosey. We -- we do find sometimes that  
25 people's affiliations -- I think one of the questions we asked



1 you was if you had ever worked on a political campaign or -- or  
2 anything and you said you had, but it wasn't really our  
3 business --

4 A. Correct.

5 Q. -- whose it was. One of -- one of the reasons we  
6 ask that is because we want to know, for instance, if you had  
7 worked on my boss, Craig Watkins' campaign, the Defense would  
8 want to know that because that might affect the way you would  
9 view our evidence or whether you would come in kind of with a  
10 bias or a leaning one way or the other. So I just want to  
11 clear that up. We weren't just being nosey.

12 The -- the second thing I want to tell you is  
13 that even though we got all of your information and -- and  
14 asked a lot of questions in the questionnaire, we still give  
15 everybody the opportunity to come in and talk to us  
16 individually. And you just heard the Judge say I get 45  
17 minutes, if I need 45, and the Defense gets 45 minutes for each  
18 individual juror. You've been on a jury before, twice; is that  
19 right?

20 A. Correct.

21 Q. And you know that when you were on those juries,  
22 they just brought up a group of citizens and everybody talked  
23 to the jurors all at one time. That same day probably you went  
24 in and started to hear evidence of the case. How long did  
25 those trials last?

1           A.     I had one occasion where it lasted a couple of days.

2           Q.     And the other one?

3           A.     One day.

4           Q.     One day. So really short trials. And most of the  
5 trials that happen down here at this courthouse work that way,  
6 but because we're talking about a capital murder case where the  
7 State is seeking the death penalty, the process is completely  
8 different in terms of how we seat the jurors and then how the  
9 case proceeds through the trial, as well. So this is your only  
10 opportunity today to tell us how you feel about the law, what  
11 your personal feelings are, and then in the end let us know  
12 whether your personal feelings are so strong one way or the  
13 other that you're not going to be able to set them aside and  
14 follow the law as the Judge will give it to you, because we  
15 know when we're talking about the death penalty, we've got  
16 jurors that have come in and told us -- I say jurors, potential  
17 jurors, citizens that come in and told us that if you show me  
18 that somebody intentionally took someone's else's life in the  
19 course of a robbery, which is what a capital murder is, I'm  
20 going to vote for the death penalty every time. You just tell  
21 me which -- how do I answer this stuff, because I'm always  
22 going to say the death penalty.

23                       We also have jurors that come in and tell us  
24 that because of their feelings about the death penalty, they're  
25 never going to be able to assess the death penalty. That's

1 just not something they believe in. It's not a decision that  
2 they could live with.

3                   Neither one of those groups of people are going  
4 to be qualified. Can you see why?

5           A.     Definitely.

6           Q.     Tell me why. Why not?

7           A.     Because they have already have a made-up mind.

8           Q.     Right. Because both the State of Texas and the  
9 Defense are entitled to 12 jurors who will come in and listen  
10 to the evidence open-minded, and base their verdicts on the  
11 evidence. Kind of let the evidence and the law lead them to  
12 the proper verdict, whether that's guilty or not guilty of  
13 capital murder and whether that ends up being a life sentence  
14 without parole or a death sentence, right?

15          A.     Correct.

16          Q.     So I wanted to talk to you about a few things in  
17 your questionnaire, and I know when we asked you to fill this  
18 out, we didn't explain how the law would apply or what the law  
19 is, frankly, for capital murder. We were looking for your  
20 feelings.

21                   On the very first page we asked you if you were  
22 in favor of the death penalty, and you said you were. An eye  
23 for an eye. And I think you tell us that in a couple of  
24 different places. You believe in an eye for an eye, do you  
25 not?

1           A.     I believe in the Bible, so, yes.

2           Q.     And then you said if you take a life, then you give  
3 a life.

4           A.     Correct.

5           Q.     You understand now, I'm sure, by reading the  
6 pamphlet that the -- that the Judge gave you, that that's not  
7 the way the law works in a courtroom. And I -- and I mean no  
8 disrespect to your personal feelings. Nobody is going to try  
9 to change your feelings. Nobody is going to argue with how you  
10 feel, but I'm pointing out that the law doesn't say that  
11 obviously because we have two possible punishments, life  
12 without parole in prison or the death sentence, right?

13          A.     Understood.

14          Q.     And so if -- if every time somebody committed an  
15 intentional murder, the death penalty was the result, we  
16 wouldn't need all this process, right?

17          A.     Absolutely.

18          Q.     Okay. So -- and we'll talk more about specifically  
19 how the process works in a minute.

20                   On the second page we asked you: What do you --  
21 what's your best argument for the death penalty, and what's  
22 your best argument against the death penalty? And you said: I  
23 don't know to both of those. Had you ever really given a lot  
24 of thought about the death penalty before we called you down  
25 here back in June?

1           A.     Actually I had not been on that type of trial, so I  
2 had not thought about one way or the other. I think it would  
3 have to depend on the case. It's on a case-by-case basis, and  
4 I cannot predict how a case will go if I have not sat in on  
5 one, so I wouldn't know that answer.

6           Q.     Okay. Is -- this may sound like a silly question to  
7 you. It probably is because I'm a criminal lawyer. I practice  
8 criminal law. So it's not unusual in my house for the death  
9 penalty to be a topic of conversation. I recognize that in  
10 most citizens' homes you don't talk about the death penalty a  
11 lot; is that fair?

12          A.     That's fair.

13          Q.     Have you had any conversations with family members  
14 in the past about what their feelings are about the death  
15 penalty?

16          A.     No, I have not. I have not discussed their feelings  
17 because once again, I have to say, their feelings are their  
18 feelings. I really don't want to know what they are.

19          Q.     Okay. Can you -- have you thought more about the  
20 death penalty from the time you were here in June until now,  
21 kind of with the thought I may be on this jury, how do I really  
22 feel?

23          A.     Well, I thought about that it's a possibility that I  
24 could be chosen to serve on the jury, but whether I thought  
25 about the death penalty, no. I put it out of my mind thinking

1 whether or not I get called in again, I will cross that bridge  
2 when I get there.

3 Q. Okay. So at this point, do you -- are you able to  
4 tell me -- let me ask you this. What purpose do you think the  
5 death penalty serves? You're in favor of it. Why do you think  
6 we should have it?

7 A. Well, honestly -- I mean, I can't say that I'm  
8 necessarily in favor of it to that degree. I just say that, in  
9 some cases it warrants, depending on the case. But once again,  
10 I can't say, you know. I really don't. It always have to be  
11 on a case-by-case basis, and I don't try to make pre-decisions  
12 about things I have no knowledge of. I really don't.

13 Q. Have you ever found yourself watching the news or  
14 whatnot and heard about a case that came on the news, a crime  
15 happened last night and they're talking about it on Fox 4 or  
16 Channel 8, whatever news you watch, and you say, boy, whoever  
17 did that really ought to get the death penalty?

18 A. No. That's not my choice, nor decision to make.

19 Q. Okay. Okay. When you tell us that you believe in  
20 an eye for an eye, how do you think that applies -- I know that  
21 comes from your religious beliefs. How do you think that  
22 applies in -- you know, in how you feel about justice and the  
23 criminal process?

24 A. Well, I guess maybe it probably don't have anything  
25 to do with it, other than just my opinion.

1 Q. No, and that's what I'm asking for.

2 A. Right.

3 Q. I'm just asking if you -- how you reconcile those --  
4 those feelings with the law.

5 A. Well, the law is the law, and you have to go  
6 according to the law. And I'm always going to consider the law  
7 and be respectful of the law. I mean, I live in a great  
8 country and I'm thankful that we do have -- it protects us, and  
9 it's just a right that we're given as citizens. So that's how  
10 I see that.

11 Q. Okay. On page 3, if we can kind of go to page 3,  
12 the very first question, Question Number 11, we said -- we  
13 asked you if you think there are some crimes which call for the  
14 death penalty solely because of their severe facts and  
15 circumstances, regardless of whether the guilty person has  
16 committed prior violent acts. This is the first violent crime  
17 they've ever committed. They started with the biggest one of  
18 capital murder. And you said: Yes, murder is final and no  
19 coming back from. Society can't allow anyone to go around  
20 taking another person's life.

21 Do you feel like that's kind of where your --  
22 what purpose you think the death penalty would serve is to --  
23 that that is the just verdict?

24 A. Well, I'm not judge -- I'm not a judge, and I'm not  
25 the jury as of yet. I don't know. It will pertain to the case

1 and the facts that are presented within the case, so whether or  
2 not that case will be death penalty or whatever, I can't  
3 predict that. I don't know. I'm just giving you my opinion  
4 regardless to how -- and correct it may be.

5 Q. Right. And there are no right or wrong opinions.  
6 There are no right --

7 A. Right.

8 Q. -- or wrong answers.

9 A. Right.

10 Q. You know, I'll tell you again that I'm not arguing,  
11 and I'm -- believe me, I'm not arguing or quibbling with your  
12 feelings. I'm just trying to kind of figure out where you're  
13 coming from in terms of --

14 A. Right.

15 Q. -- of what -- you know, what you think is right  
16 versus what you think is wrong. And some of these questions,  
17 that's what we're trying to get at in the questionnaire.

18 On Question Number 14 we said: If you believe  
19 in using the death penalty, how strongly do you hold that  
20 belief on a scale of 1 to 10, and -- 1 being the least and 10  
21 being the most? You said 10. You -- you firmly believe that  
22 the death penalty is a proper punishment under the right set of  
23 circumstances.

24 A. Correct.

25 Q. Okay. You told us in the questionnaire that when



1 you were on the previous trials, we asked you if you  
2 participated in the jury's discussion the same, less, or more  
3 than other jurors and whether your -- whether you had more  
4 influence, less influence, or the same influence on the  
5 verdict. Do you remember that question?

6 A. I do.

7 Q. And you told us that you participated more than the  
8 other jurors and had more influence than the other jurors.  
9 Tell -- tell me about that. How -- how did that process work?

10 A. Well, because of my personality, I'm credible, so  
11 based on that.

12 Q. So the other jurors just kind of followed your lead?

13 A. Not necessarily followed my lead. I had my opinion,  
14 and I gave my opinion. I voiced my opinion. So -- and I do  
15 believe that a person's opinions sometime warrant others  
16 listening, so --

17 Q. Did the other jurors participate, as well, or did  
18 you find some of them just sat and didn't really --

19 A. Some didn't say very much.

20 Q. Okay. Did you enjoy being on the juries?

21 A. Not particularly.

22 Q. Tell me why.

23 A. Well, I mean, I was just doing my duty. I mean,  
24 because we're called to serve on a jury. And sometimes we get  
25 chosen and that's -- I'm just going along with doing my civic

1 duty and not that I'm going to volunteer to do it unless I'm  
2 called.

3 Q. Right. Right. No, I understand that, and we do  
4 appreciate you coming down because not everybody is as  
5 civic-minded as you. A lot of people ignore the summons. So  
6 we do appreciate you coming. I just kind of wanted to  
7 explore -- it's not very often that we see somebody say that  
8 they participated more and had more influence than the other  
9 jurors, so I was curious about how that worked.

10 Let's talk about some basic principles of law.  
11 You're going to be familiar with them because you've served on  
12 two juries before, so I'm going to go through them pretty  
13 quickly, but if you have any questions, let me know.

14 The first is you know that anybody charged with  
15 a crime has the presumption of innocence?

16 A. Correct.

17 Q. And the State has the burden to prove somebody  
18 guilty, and if we fail to prove them guilty, then that  
19 presumption of innocence alone is enough for them to be found  
20 not guilty, right?

21 A. Understood.

22 Q. The job is always going to be on the prosecution --  
23 on the State of Texas to bring the proof and the evidence in  
24 the case, and that never shifts over to the Defense. The  
25 Defense attorneys don't have to prove anything, right?

1 A. Understood.

2 Q. And a defendant never has to testify in their own  
3 trial, right?

4 A. Correct.

5 Q. If a defendant chooses not to testify, that right is  
6 there -- that choice is theirs and theirs alone, and that Fifth  
7 Amendment right protects them in that choice in the  
8 guilt/innocence phase of the trial, as well as the punishment  
9 phase of the trial, if the jury should get there. That means  
10 that if a defendant chooses not to testify, the jury is  
11 instructed by the Judge that they cannot consider that silence.  
12 They can't talk about it, refer to it, or use it as any  
13 evidence at all. You've heard that before?

14 A. Absolutely.

15 Q. And do you have any concerns about being able to  
16 afford the Defendant that Fifth Amendment right if the  
17 Defendant chooses not to testify?

18 A. That's a given right that we all have.

19 Q. Okay. And it could be somebody chooses not to  
20 testify for any number of reasons, but the jury would be  
21 instructed not to even consider it. You could do that?

22 A. Correct.

23 Q. You look to the evidence you did hear in the case  
24 and decide, did the State of Texas prove what they were  
25 supposed to prove or not.

1 In a capital murder case, and we -- I kind of  
2 brushed over it, but capital murder is the only crime for which  
3 the death penalty is an available punishment. I want to talk  
4 to you and describe to you what capital murder is. And capital  
5 murder is always going to be an intentional murder. And when I  
6 say intentional, that doesn't mean premeditated. That's two  
7 different things. We don't have premeditated murder in Texas.  
8 We say that intent can be formed in an instant.

9 So let's say that I'm sitting around last night  
10 at my house and I start thinking about these cool shoes that  
11 Elaine is always wearing and I want them. And I think Elaine  
12 is probably not just going to give them to me because I asked  
13 real nice. So I decide I'm going to have to bring a gun in  
14 case she doesn't cooperate and just give them to me, okay?

15 A. Okay.

16 Q. My goal is to get the shoes. I come in today and I  
17 point the gun and I say, Elaine, I got this gun and I want you  
18 to give me the shoes. I don't want to have to use this. Give  
19 me the shoes. And she gets feisty like I thought she might,  
20 and she pushes me back to keep me from taking her shoes, to  
21 keep me away from her. And I point the gun at her head and  
22 pull the trigger and take the shoes. That wasn't my plan last  
23 night, was it?

24 A. No.

25 Q. I prepared that it might have to happen, but that

1 wasn't my plan. My plan was to take the shoes, but did I  
2 intend to cause her death when I shot her in the head?

3 A. Maybe at that moment.

4 Q. At that moment I did, right? And that's what we  
5 say -- that's why we say intent can be formed in an instant.  
6 We're not talking about premeditation or planning. It may not  
7 be your plan going into the crime, but something happens and  
8 you decide -- and at the moment you decide to take the person's  
9 life, you're guilty of an intentional murder. And that could  
10 be the case even if I instantly regret what I did. Even if I  
11 instantly say, oh, that was a bad idea, I shouldn't have killed  
12 her, I'm still guilty of an intentional murder. And in that  
13 case, I'd be guilty of an intentional murder and a capital  
14 murder because it was during the course of taking her shoes --  
15 in the course of a robbery. Can you see that?

16 A. Understood.

17 Q. What do you think about that? Do you think that's  
18 fair and reasonable, that I should be guilty of capital murder  
19 in that situation?

20 A. I don't want to say. I'm not there to hear all the  
21 facts. I just heard what you said as a general summary of  
22 that, and I would want to hear everything to be able to make a  
23 decision, so I'm not going to say.

24 Q. Well, I can tell you that in the guilt/innocence  
25 phase of the trial when you're trying to decide if somebody is

1 guilty or not guilty of capital murder, that's about all you're  
2 going to hear is that I came up to her, told her to give me the  
3 shoes, she didn't, I shot her in the head, and I took the shoes  
4 and it occurred on this date in Dallas County, Texas. There's  
5 not going to be any other facts.

6 A. Oh, okay.

7 Q. So I think what I'm asking you is if you think  
8 that's fair, because a lot of people tell us, you know, things  
9 happen in a snap decision, and I don't think somebody ought to  
10 be guilty of capital murder unless it was premeditated. What  
11 do you think about that?

12 A. Are you asking me if I think the sentencing portion  
13 is fair, or what are you asking me?

14 Q. No, I'm asking whether you think it's fair that  
15 someone would be guilty of capital murder if they didn't -- if  
16 they didn't premeditate or plan the murder? If it was one of  
17 those intent in an instant situations, whether they should even  
18 be guilty of capital murder?

19 A. Murder is murder.

20 Q. Okay. So in that situation, it's a capital murder,  
21 and that's what we're talking about. We're not talking about a  
22 case of self-defense, because if you're defending yourself,  
23 you're going to be not guilty, right? You have a right to  
24 defend yourself.

25 A. Right.

1 Q. If it is -- and, again, we're talking about an  
2 intentional murder, not a -- not self-defense, not an accident.  
3 You know, not I come up to Elaine to get her shoes, point the  
4 gun, I take the shoes, and she starts chasing after me, and I  
5 shoot her in the foot to keep her from chasing me -- keep her  
6 from catching me, and then she bleeds to death. The jury might  
7 look at those facts and say, I'm not so sure that Andrea meant  
8 to kill Elaine. I think she just tried to stop her from  
9 running and she died anyway. That might not be an intentional  
10 murder because for intentional murder, we're talking about the  
11 person's goal was to cause the death. Their intent was to kill  
12 the person, not slow them down, not hurt them, but kill them.  
13 Does that make sense?

14 A. It makes sense.

15 Q. So keep in mind that when we're talking about  
16 capital murder, it's an intentional murder, plus that something  
17 else -- in this case a robbery. That's what we've alleged,  
18 intentional murder in the course of a robbery. And it's only  
19 in capital murder cases where the death penalty is available as  
20 a punishment. And it's never automatic. You either get life  
21 without the possibility of parole or the death sentence.

22 So the jury is not going to ever be asked who  
23 thinks he deserves death, who thinks he deserves life or who  
24 votes life, who votes death because the law is going to tell us  
25 in the state of Texas that really how we decide who gets life

1 versus who gets death is that first special issue. The State  
2 of Texas says there is a presumption, like we had the  
3 presumption of innocence, that's gone once somebody is found  
4 guilty of capital murder. But going into the punishment phase,  
5 there's a presumption that the life sentence is proper. And in  
6 the vast majority of capital murder cases, the life without  
7 parole sentence is the proper sentence. It's only in those  
8 cases where the person is convicted of capital murder and the  
9 State can go on in the punishment phase of the trial to prove  
10 that the person will more likely than not be a continuing  
11 threat to society that the death sentence becomes the more  
12 proper punishment. Does that make sense?

13 A. It does.

14 Q. So if the person that you've convicted of capital  
15 murder is not going to be a continuing threat to society, the  
16 life sentence stands. And the burden is on the State of Texas,  
17 even in the punishment phase of the trial, to bring forth  
18 evidence to convince the jury beyond a reasonable doubt the  
19 answer to Special Issue 1 is yes. The presumed answer is no  
20 until I prove it's yes. Does that make sense?

21 A. It does.

22 Q. What -- when I'm talking about the punishment  
23 phase -- did y'all do punishment in the cases you were juror  
24 on --

25 A. We did.



1 Q. -- or did the Judge?

2 A. Well, I can't remember really, to tell you the  
3 truth, it's been so long ago.

4 Q. We have two parts to the criminal trial. I've told  
5 you in the first part of the trial all you're going to hear  
6 about is kind of that checklist of things that are in the  
7 indictment. In Dallas County on this date the Defendant on  
8 trial committed an intentional murder during the course of a  
9 robbery. That's what I have to prove. And that's the only  
10 evidence that will come in in the first part of the trial.  
11 Somebody's background, upbringing, you know, any of the other  
12 things that might be relevant to whether they receive a life  
13 sentence or a death sentence don't come in in the first part of  
14 the trial. So you're not going to hear about criminal history  
15 or lack of criminal history in the first part. But in the  
16 second part of the trial, all of that evidence is presented to  
17 the jury. So you'll know before you go back to deliberate  
18 whether this should be a life sentence or a death sentence.  
19 You will know as much as we can bring you about the person's  
20 background, upbringing, education, character. Any of that  
21 information that we can bring to you, the jury will have, okay?

22 A. Okay.

23 Q. And it is my job, once again, to prove that he will  
24 be more likely than not that he will commit criminal acts of  
25 violence that would constitute a continuing threat to society

1 in the future, okay?

2 A. Okay.

3 Q. Now, you and I probably both recognize that  
4 predicting the future is not something that can be done with  
5 any absolute certainty, right?

6 A. Correct.

7 Q. But you can see that in Special Issue Number 1, the  
8 first question the jury gets asked is what is more likely than  
9 not to happen in the future, right?

10 A. Right.

11 Q. Do you think it's possible for the State of Texas to  
12 prove that beyond a reasonable doubt, what somebody more likely  
13 will do in the future?

14 A. It's possible.

15 Q. What do you think -- what information do you think  
16 is helpful to answer what somebody is more likely than not to  
17 do in the future?

18 A. I'm not going to predict something -- no, I'm sorry.

19 Q. I'm sorry?

20 A. You're asking me what do I think could be said or  
21 done. I don't know.

22 Q. No, I'm asking you how -- I mean, this is something  
23 that I have to prove --

24 A. Okay.

25 Q. -- beyond a reasonable doubt. You've told me that

1 you do think it's possible to determine what somebody more  
2 likely than not would do in the future, right?

3 A. Yes.

4 Q. What -- what kind of information do you think helps  
5 make that decision?

6 A. Facts.

7 Q. What kind -- what do you mean, facts?

8 A. The facts of the case -- I mean, you know, you'd  
9 have to hear that.

10 Q. Uh-huh.

11 A. So you could make a decision. I couldn't make a  
12 decision on something I know nothing of.

13 Q. Well, let me ask you, do you have children?

14 A. I do. I have two.

15 Q. And when your kids were little, obviously the laws  
16 of the state of Texas -- I don't know about your house, but I  
17 know -- I don't have kids, but I remember growing up, and in my  
18 house these laws that we've talked about, that presumption of  
19 innocence and the Fifth Amendment and all that did not -- did  
20 not apply at my mamma's house, and I bet they didn't at your  
21 house either. You -- something got broken in the house, you  
22 bring the kids in and you say, everybody fess up, who did it,  
23 right?

24 A. Well, yeah.

25 Q. They didn't have the right to tell mamma, I would

1 like to plead the Fifth, did they?

2 A. Well, if you're speaking in terms of something  
3 broken, the evidence speaks for itself, if something is broken.

4 Q. Right.

5 A. And if you've got two children, one of the two are  
6 responsible, yes.

7 Q. And how did you go about figuring out which one it  
8 was?

9 A. Well, you fess up or both of you get a spanking.

10 Q. That's the way it worked in my house, too. So that  
11 Fifth Amendment didn't apply. Somebody better start talking,  
12 right?

13 A. Well, I wasn't in a court of law, so it didn't have  
14 anything to do with law.

15 Q. Exactly.

16 A. It was just Wanda's rules.

17 Q. Exactly, exactly. I'm familiar with that.

18 So the -- so I guess -- were you able to look at  
19 your children -- you have two daughters?

20 A. Two, yes.

21 Q. Look at your two girls and kind of look ahead and  
22 see how they were going to turn out based on how they had been  
23 in the past?

24 A. No, I couldn't predict that. I wish I could. As a  
25 mother, we would like to believe we know how our children will

1 turn out, but we don't know that.

2 Q. Did you know which kid was more likely to be the one  
3 who had broken the lamp?

4 A. No, because both of my girls would hide behind each  
5 other, so, no.

6 Q. Well, I'm -- I'm trying to kind of figure out if you  
7 believe it's possible, how do we know what somebody is more  
8 likely than not going to do tomorrow or five years or 10 years  
9 down the road?

10 A. We don't. We don't know that, based on just home  
11 environment, you don't. Criminal law is different from my  
12 personal life. It has nothing to do with the other.

13 Q. Okay. Well, you've told me that it is possible to  
14 prove that, and I'm trying to figure out because now it sounds  
15 like you're telling me we can't predict what somebody is going  
16 to do.

17 A. Well, you can predict. I'm not speaking of a  
18 criminal case. I'm speaking of my personal life which has  
19 nothing to do with a criminal case, and I cannot --

20 Q. Then let's talk about the criminal case.

21 A. I cannot make that applicable.

22 Q. Okay. Then let's talk about the criminal case. In  
23 a criminal case, you know we're talking about this first  
24 special issue, and how is it that -- that you believe that's  
25 capable of proof. What -- how do you think somebody goes about

1 predicting whether this person you've convicted is more likely  
2 than not to do something in the future?

3 A. I guess it would determine based on the facts and  
4 the evidence and what the case is and what they have done,  
5 so --

6 Q. Okay. Do you think that you could look at evidence  
7 of a person's character to try to determine what they would  
8 more likely do in the future?

9 A. Character does not tell you what a person will do or  
10 not do.

11 Q. Okay.

12 A. It does not.

13 Q. What about a person's criminal past? What if  
14 they've been --

15 A. Criminal past has nothing to do with whether or not  
16 you make a decision on a given moment.

17 Q. Okay.

18 A. I mean, things and circumstances are always  
19 different at any given time, so, no, I wouldn't say that you  
20 could determine whether or not a person is going to do a  
21 heinous act based on prior history.

22 Q. Okay. What do you think would speak to what  
23 somebody would do in the future?

24 A. Well, if you break the law and you have done certain  
25 cases and you done certain things, crimes -- I mean, if you've

1 killed people not accidentally and it's something that you  
2 intentionally do, I would say that that warrants the law to  
3 enforce the law. I mean, what can I say?

4 Q. By the time you get to Special Issue Number 1, you  
5 will have already determined that the person on trial committed  
6 an intentional killing in the course of committing or  
7 attempting to commit a robbery. That's -- that's done, right?  
8 You've already convicted him.

9 A. Okay.

10 Q. Do you believe that anybody who is capable of  
11 committing that type of intentional crime, an intentional  
12 murder in the course of a robbery, would more likely than not  
13 commit criminal acts of violence in the future?

14 A. I would say it's a good possibility they would.

15 Q. When we talk about probability -- see the word  
16 "probability" there in that question. I keep saying more  
17 likely than not, and I want to make sure you know that's what  
18 probability means.

19 A. Understood.

20 Q. More likely than not -- I'm sorry?

21 A. I understand.

22 Q. So it's not absolute certainty because nobody could  
23 ever predict with absolute certainty what will happen in the  
24 future, but it's more likely than not which is more than a mere  
25 possibility, because anything is possible. The question is, is

1 it probable, more likely than not?

2 And criminal acts of violence is not defined in  
3 that question. It means what it means to you. But you'll  
4 notice we know what it isn't. It isn't another murder or a  
5 robbery or a sexual assault. The legislature didn't pin us  
6 down to what we -- what kind of criminal acts of violence we're  
7 talking about, right?

8 A. Right.

9 Q. It means whatever it means to you, and some jurors  
10 say if I haul off and hit Elaine in the face, that's a criminal  
11 act of violence. That's an assault. Others say, you know, in  
12 the right circumstances, maybe spitting on a prison guard could  
13 be a criminal act of violence. But we know that what we're  
14 talking about in Special Issue Number 1 is criminal acts of  
15 violence that would constitute a continuing threat to society.  
16 When you hear the word "society," what do you think of?

17 A. People at home, the general public.

18 Q. Coming and going, work and school and home and then  
19 grocery store, etcetera. When we're talking about society in  
20 Special Issue Number 1, can you see how we're -- we're talking  
21 about even prison society, because by the time you get here,  
22 the best thing that can happen to the Defendant is life without  
23 parole, right?

24 A. Right.

25 Q. Where is he going to serve that sentence?



1 A. In the penitentiary.

2 Q. Exactly. So the question being asked of the jurors  
3 in Special Issue Number 1 is whether it's more likely than not  
4 that that Defendant will commit criminal acts of violence that  
5 would constitute a continuing threat even to prison society,  
6 whether it's prison society or our society. Do you believe  
7 there's violence in prison?

8 A. Absolutely.

9 Q. Have you ever visited a penitentiary?

10 A. No, I cannot say that I have. Haven't had occasion  
11 or a reason to.

12 Q. But obviously, the news and just being around, we  
13 know there's violence in prison, right?

14 A. Yes.

15 Q. We know that there's guards that work there and  
16 teachers and preachers and nurses and doctors, people who go in  
17 to visit loved ones, other inmates, that they kind of socialize  
18 among one another, work together, eat together, live together.  
19 Do you believe that the people inside those prison walls,  
20 whether they're inmates or people who work there or visit  
21 there, deserve protection like you and I do?

22 A. Of course.

23 Q. Do you think that the prison can control all  
24 prisoners?

25 A. No, I don't believe that.

1 Q. So it is possible for a person who has tendencies to  
2 be violent to pose a threat to people in the penitentiary.  
3 Would you agree?

4 A. I'll agree.

5 Q. So Special Issue Number 1, it's my job, again, to  
6 prove that beyond a reasonable doubt, that the Defendant you've  
7 convicted of capital murder will more likely than not be a  
8 threat even in the penitentiary. And, again, I have to prove  
9 it beyond a reasonable doubt. The Defense doesn't have to  
10 prove that he won't. If I prove that beyond a reasonable  
11 doubt, the answer to that question is yes, and then we would  
12 move on to the second special issue.

13 If the answer is no, the State didn't prove  
14 that, then you would answer it no, and the trial would be over.  
15 The jury would never get to Special Issue 2, okay?

16 A. Okay.

17 Q. If the jury says, yes, then we go on to Special  
18 Issue Number 2. And now my job is over. I've done everything  
19 that I have to do to prove to this jury that the death sentence  
20 is the proper sentence in this case. Special Issue 2 tells the  
21 jury to go back and look at everything one last time and ask  
22 themselves whether they heard anything in the evidence that  
23 convinces them that the life sentence is really the more proper  
24 sentence. I don't have any burden of proof. The Defense  
25 doesn't have any burden of proof. And, again, the Defendant

1 doesn't have to testify and convince the jury that the life  
2 sentence is really better. He doesn't have to take the stand  
3 and beg for his life, but the jury has to consider whatever  
4 evidence they heard. They consider the circumstances of the  
5 offense. They consider the Defendant's character and  
6 background. That may mean criminal history or lack of criminal  
7 history, what kind of person have they been, the personal moral  
8 culpability of the Defendant.

9           Now, that, sometimes jurors tell us, means to  
10 them they're talking about remorse. Does the person feel bad  
11 about what they did? Are they sorry? Are they remorseful?  
12 But you may never know that, right? If a defendant chooses not  
13 to testify, how are you going to know whether they're  
14 remorseful?

15           A.     You don't.

16           Q.     You wouldn't, right? And the law would say if you  
17 don't hear it, then it's nothing to consider at all. Once  
18 again, if he doesn't testify, you just don't consider it. You  
19 look at the things you did hear. But you look at all of the  
20 evidence from the first part of the trial and all of the  
21 evidence from the second part of the trial and ask yourself  
22 whether there was something in the evidence, something  
23 sufficiently mitigating, to tell you in your heart of hearts  
24 that his moral blameworthiness is lessened, that he really  
25 does -- that the life sentence really is the more proper

1 sentence for whatever reason. And there's not going to be a  
2 checklist of things to tell you this -- if there's evidence of  
3 this, that's mitigating, or if there's evidence of this, that's  
4 aggravating. It's really up to you to decide.

5           We asked you a few questions in the  
6 questionnaire that relate to this mitigation issue, so I want  
7 to talk on page 6 -- if I could get you to look there at  
8 Question Number 39. And, again, I want you to remember that  
9 nobody is going to tell you what is or isn't mitigating to you.  
10 It's one of those things that you probably can't even  
11 articulate until you see it for yourself. But we said in  
12 Question 39: Some people feel genetics, circumstances of  
13 birth, upbringing, and environment should be considered when  
14 determining the proper punishment of someone convicted of a  
15 crime. What do you think? You said: It depends on the crime.  
16 What do you mean by that?

17           A. Well, I was actually thinking whether or not --  
18 depends, like I said, on what the case is about. We're talking  
19 about capital murder, and I was speaking in general.

20           Q. Well, tell me what you think about in a capital  
21 murder case. Do you think these things should be considered in  
22 a capital murder case in deciding whether a person receives  
23 life or death?

24           A. No.

25           Q. Let me tell you what the law says, and then you tell

1 me if that's something you think you can follow as a juror,  
2 because I'm just asking your personal feelings now. Now we're  
3 going on to that if you're on the jury, can you follow the law,  
4 okay?

5 A. Okay.

6 Q. The law would tell you that if there is evidence  
7 about a person's background, upbringing, genetics. Maybe you  
8 hear evidence about abuse as a child, severe physical or mental  
9 abuse or sexual abuse or maybe you hear they grew up in a poor  
10 neighborhood or single parent household. If that is in the  
11 evidence, Special Issue Number 2 is going to tell the jury that  
12 they have to consider it. It doesn't say you have to consider  
13 it mitigating. It doesn't say you have to consider it and  
14 think it lessens their moral blameworthiness or their  
15 responsibility for the crime. It just says you can't say, oh,  
16 well, you know, let me just -- here comes mamma to say he had a  
17 bad childhood, I'm not even going to listen. I'm going to do  
18 crossword puzzles or I'm going to play on my phone because I  
19 don't care about that, right? You have to consider it, listen  
20 to it, and then decide for yourself is that something that is  
21 mitigating to me or is that something that really doesn't move  
22 me at all, because a lot of people tell us you make personal  
23 choices. People overcome bad childhoods all the time. It is  
24 an individual choice that's up to the person.

25 The question I have for you is, if it's in the

1 evidence, are you going to consider it, listen to it before you  
2 just close your mind to it, even in a capital murder case?

3 A. I would consider it.

4 Q. Okay. And then you decide if it is -- if it has any  
5 weight to be given in your mind. Does that sound fair?

6 A. Fair.

7 Q. Okay. On page 9, going into page 10, we asked you  
8 some of your opinions and thoughts on alcohol and drugs,  
9 addiction and intoxication. And I want you to understand and  
10 know that we're not ever going to be talking about this case  
11 today. I'm not asking you now what are you going to do or how  
12 are you going to feel about this case, because we can't talk  
13 about this case. But in general terms in a capital murder case  
14 in the punishment phase, there may be evidence of drug use or  
15 alcohol use or addiction. Would you agree with the statement  
16 that drugs and alcohol are a big problem in our community?

17 A. Yes.

18 Q. That a lot of crime in general -- and I don't mean  
19 necessarily capital murders, but a lot of crime in our  
20 community stems from drug use and addiction, whether it's car  
21 burglaries to get money for drugs and whatnot. Would you agree  
22 with that statement?

23 A. Definitely could be a factor.

24 Q. That drugs play a role in that. So it does come  
25 into evidence in many criminal cases. When we asked you your

1 thoughts and general feelings about alcohol and drug abuse, you  
2 said you don't like it. And you've never had any family member  
3 or close friend involved in drug use or alcohol use at all or  
4 addiction?

5 A. Not to my knowledge.

6 Q. Question Number 64, on page 10. We told you that  
7 the law in the state of Texas is that voluntary intoxication  
8 does not constitute a defense to the commission of a crime.  
9 And then we asked you if you agreed with that, and you said no.  
10 I want to make sure that we're on the same page about what that  
11 statement means.

12 A. Okay.

13 Q. That means if I go out tonight and get myself good  
14 and drunk, drink a bottle of vodka, and then decide to go, you  
15 know, burglarize somebody's house, I can't -- when I get  
16 arrested by the police, I can't go, well, you know, I was  
17 really drunk, therefore you can't arrest me. That's not a  
18 defense, because it's never going to be the defense available  
19 to somebody to the crime. Does that make sense?

20 A. Yes.

21 Q. How do you feel about that? Do you think that  
22 should be the law?

23 A. No.

24 Q. Tell me why.

25 A. I mean, if you're intoxicated and you go out and

1 commit a crime, you're still responsible for that crime.

2 Q. So you -- you do agree that the law shouldn't allow  
3 somebody to say, I was drunk so I don't get prosecuted?

4 A. I do.

5 Q. Okay. And then on Question Number 65, the next  
6 question, we said that the law further provides that this  
7 evidence of intoxication may be considered in mitigation of  
8 punishment. I want to make sure it's real clear what we're  
9 asking. We're not asking you if you would find it mitigating.  
10 What I'm -- again, kind of like what we talked about with  
11 Question 39 a minute ago, if there is evidence that somebody  
12 was intoxicated at the time they committed the crime, Special  
13 Issue 2, again, comes back and says you have to consider  
14 everything, even evidence of intoxication, if it's before you  
15 in the trial, and then you decide is it mitigating, is it  
16 aggravating, or is it neither and it just doesn't matter to me  
17 at all. You can't just say, well, here we go with the excuse I  
18 was drunk. I'm not listening to that. Does that make sense?

19 A. It does.

20 Q. Do you believe that you could consider that if it  
21 was in the evidence before you decide to disregard it or before  
22 you decide how, if at all, it weighs in your verdict?

23 A. Yes.

24 Q. And following up on that in Question 66: Would a  
25 person's use of drugs or alcohol at the time of the offense



1 automatically prevent you from assessing the death penalty if  
2 you found him guilty of capital murder? And you said: No, it  
3 wouldn't. And I'll tell you that nothing is ever automatic.  
4 You've said it over and over again. It's going to depend on  
5 the facts and the circumstances. If there is evidence of  
6 intoxication at the time of the offense, you weigh it, you  
7 consider it, you compare it to the other evidence. All of it  
8 plays a part in your decision making, but it can't  
9 automatically mean I'm going to vote life every time. Does  
10 that make sense?

11 A. It does.

12 Q. And is that how you feel?

13 A. Yes.

14 Q. Just because somebody was high or drunk at the time  
15 isn't automatically going to make a death sentence or a life  
16 sentence; is that right?

17 A. True.

18 Q. You know, I think, by the time we've gotten here --  
19 this far along, that my boss, Craig Watkins, the elected  
20 District Attorney, has decided that we're seeking the death  
21 penalty in this case. We've gone nine weeks now into the  
22 process of selecting the jury, and we're not still thinking  
23 about it or considering it. That decision has been made.

24 We believe that we have the type of evidence,  
25 the quality and quantity of evidence that will convince 12

1 jurors, following their oaths, to find Matthew Lee Johnson  
2 guilty of capital murder. And I tell you this because  
3 sometimes sitting at home and thinking about the death penalty  
4 or thinking about serving on a jury, you've had a couple of  
5 months now to think about potentially serving on a case like  
6 this. Your answers, based on the evidence, we believe, will be  
7 answers that will lead the Judge to basically sign a warrant  
8 for his execution, that -- an answer yes to Special Issue 1 and  
9 no to Special Issue Number 2, by all of these jurors will  
10 result one day in Matthew Lee Johnson being taken to Huntsville  
11 and strapped to a gurney and receiving lethal injection. And  
12 I'm not telling you that to be gruesome or morbid, but just to  
13 kind of put you in the real situation, that we're talking about  
14 a real human being who has family that cares about him like you  
15 and I do. I tell you that to ask you whether you feel like you  
16 could participate in a process that might result in his  
17 execution, without doing any harm to your conscience, or  
18 weighing heavy on your heart years down the road.

19 A. Honestly, I'm going to say I prefer to be excluded.

20 Q. And I -- and I respect that position, and I  
21 understand. I'm going to tell you that over the past nine  
22 weeks we have not spoken to a single person that didn't prefer  
23 to be excluded. I mean, nobody -- nobody wants to do the job.

24 A. Right.

25 Q. It's not an easy job to do, but I will tell you that

1 the State of Texas is never going to put one of its citizens in  
2 a position where their heart will be heavy, their conscience  
3 will be bothered, or they will have difficulty living with  
4 their decision. Not a death penalty case certainly, and that's  
5 why I ask you that because sometimes I see you believe in the  
6 death penalty and I see you favor the death penalty in the  
7 right kind of case, but it's sometimes different when you know  
8 but for your decision, a human being might not be getting  
9 executed, so I put you in that seat to ask you, if it's  
10 something that's going to bother you, now is your only  
11 opportunity to tell us that you really can't in clear  
12 conscience participate.

13 A. Let me say it like this. Once again, I prefer not  
14 to, I mean, participate in a decision that's life and death.  
15 Could I? Yes, I probably could make a decision. Would I want  
16 to make a decision? Not necessarily.

17 Q. If you're sitting at home two, three, five, 10 years  
18 from -- from now, after serving on this jury, and you see  
19 across the news today is the day that Matthew Lee Johnson is  
20 going to be executed, you'll know that but for your vote that  
21 wouldn't be happening.

22 A. I wouldn't feel comfortable with that.

23 Q. Is that something that would violate your  
24 conscience, something that would make you regret having done  
25 your civic duty?

1           A.     Maybe. I don't know.

2           Q.     Do you feel like you could live with that decision  
3 and not look back?

4           A.     I wouldn't want to have to.

5           Q.     I really am not trying to be tacky or mean, but I  
6 keep telling you the same thing. Nobody wants to have to do  
7 it. And I -- I just want to make sure that October 28th, that  
8 last week of October and that first week of November, that  
9 we've got 12 jurors who can without hesitation make the  
10 decisions that need to be made based on the law and the  
11 evidence without worrying about violating their own conscience  
12 or their own principles or worrying how it's going to affect  
13 them. And now is really your only chance to tell us. You are  
14 the only one who knows. If you can't do it, there's nothing  
15 bad about that. You've done your civic duty by coming down  
16 here and talking to us and by serving twice before and I  
17 promise, you'll be back again to serve on another case. But a  
18 death penalty case isn't the case for everybody.

19          A.     I don't -- I don't want to participate, really.

20                   (Discussion between the counsel off the record.)

21          Q.     (BY MS. MOSELEY) Do you -- and I'm going to tell  
22 you that legally right now, you're qualified to serve on this  
23 jury. And the only question that -- you're the only one that  
24 can answer whether you can do it. You're -- you're almost  
25 there, Ms. Benjamin, and I don't know if it would violate your

1 conscience to participate or not. I mean, you're looking at  
2 the man right down here at this table, and you're going to have  
3 the decision to make whether he lives or dies in all  
4 likelihood. Can you do it?

5 A. I'm sure I could make that decision. I'm not sure  
6 how it would affect me, depending on the outcome.

7 Q. Do you believe that it may violate your conscience,  
8 that you may worry years down the road that this bothers you,  
9 that you'll take it with you?

10 A. It's possible. I don't know that. I've never had a  
11 decision of this magnitude.

12 Q. Can you guarantee me that you would base your  
13 answers to these questions -- and you know what the result of  
14 your answers would be. An answer of yes to Special Issue 1 and  
15 no to Special Issue 2 leaves the Judge with no option but to  
16 enter a death sentence.

17 A. Understood.

18 Q. Can you guarantee me that your answers to those  
19 questions would be based on the evidence and the law and not  
20 your personal feelings or your concern about what might happen  
21 down the road?

22 A. Yes, I -- I feel that.

23 Q. Okay. Okay. You're telling me you don't want to  
24 serve, but you understand at this point that that -- that you  
25 may be called upon to do it?

1 A. Definitely understand.

2 Q. And you could do it if you were chosen?

3 A. If I had to.

4 Q. Okay.

5 MS. MOSELEY: That's all I have, Judge. Thank  
6 you, ma'am.

7 DEFENSE VOIR DIRE EXAMINATION

8 BY MS. MULDER:

9 Q. Good afternoon, Ms. Benjamin. Once again, my name  
10 is Nancy Mulder, and I'm going to ask you some questions along  
11 the same lines with regard to the law and your questionnaire  
12 answers, but certainly it's -- and not in any attempt to change  
13 your mind or to -- to question how you feel. The reason we  
14 have you fill out this questionnaire before we tell you what  
15 the law is, is so we can really get a -- a true feeling for  
16 what your feelings are about the death penalty and the law that  
17 will apply in the case.

18 So what I'm basically saying is that there are  
19 no right or wrong answers, we just need to know how you feel.

20 A. Okay.

21 Q. Okay. First of all, I just want to make sure that  
22 we're on the same page with regard to -- you know, I know  
23 it's -- we're kind of putting the cart before the horse  
24 whenever we pick a jury on a death penalty case because -- just  
25 because we're here talking about the special issues doesn't

1 mean that we are in any way conceding that Matthew Johnson is  
2 guilty of capital murder. You understand that?

3 A. I do.

4 Q. Okay. It's just in order to be qualified to sit and  
5 listen to the evidence, you have to be able to answer Special  
6 Issues Number 1 and 2. Do you understand?

7 A. Yes.

8 Q. I did want to ask you about your job because it  
9 looks like you work as a default processor -- is it CHE  
10 litigation?

11 COURT REPORTER: C-h-e?

12 MS. MULDER: Yes, ma'am.

13 A. CHE. That stands for -- home equity is actually  
14 what it stands for. We're the go-between for the loss  
15 prevention department and the attorneys to pursue for default,  
16 nonpayment on mortgages, but I'm not in that department any  
17 longer.

18 Q. Oh, you're not? Okay. What department are you in  
19 now?

20 A. I'm now in bankruptcy.

21 Q. Okay. Are you still working with attorneys?

22 A. No.

23 Q. How long did you work in the Litigation Department?

24 A. Two years.

25 Q. Did you have to -- I don't know, did you have a lot

1 of exposure to the law or to the attorneys?

2 A. We had -- yes. I had like a conference call I did  
3 with them monthly to discuss issues to determine whether or not  
4 they were servicing the mortgage loans correctly or --  
5 basically our department was created to cure the delinquency,  
6 to bring the account current, and to work out a plan that will  
7 work for the customer to get their account back in order.

8 Q. So that you wouldn't have to --

9 A. So we wouldn't have to litigate. Our bottom line,  
10 we didn't want the property.

11 Q. You want the money --

12 A. We want the money.

13 Q. -- which everyone does. I totally understand that.  
14 Okay. So you didn't have to file papers at the courthouse  
15 or --

16 A. Oh, no, I didn't go in -- the attorneys took care of  
17 the legal -- legality of that.

18 Q. The only reason I asked was to see if you had any  
19 exposure to, you know, the courthouse, if you had been in court  
20 while your company was litigating something. I was just trying  
21 to find out --

22 A. There was a possibility we could have been called,  
23 but, no, I never had that occasion.

24 Q. Did you ever have an experience where your company  
25 prepared you to be a witness?



1 A. Oh, no, never.

2 Q. Is there anything about your exposure to mortgage  
3 litigation law that would affect you in -- in fairly sitting  
4 and listening to the evidence in this case?

5 A. No, because everybody want to keep their home, and  
6 bottom line, we're all -- all homeowners, or we live somewhere,  
7 whether rent or own.

8 Q. Okay. Hold on. Let me see, I had some other things  
9 that I just jotted down. Oh, I'm also curious about the cases  
10 that you served on as a juror. One of -- I'm sorry, were they  
11 civil or criminal cases?

12 A. It was a DWI is one I remember, but I don't remember  
13 much about it.

14 Q. Was it in this courthouse?

15 A. I don't remember because I've served, and I can't  
16 remember which was which. I don't remember, I'm sorry.

17 Q. That's okay. Well, okay, but it was in Dallas  
18 County?

19 A. Yes.

20 Q. Okay. Do you remember on the DWI if you -- what the  
21 outcome was?

22 A. I'm not sure. I think he was found guilty.

23 Q. And the other case, was that also criminal or  
24 something else?

25 A. No, it wasn't criminal.

1 Q. It was civil?

2 A. Yes, civil.

3 Q. What kind of -- just out of curiosity, what kind of  
4 case was it?

5 A. I don't remember really, to be honest. It was  
6 nothing major.

7 Q. A fight about money?

8 A. I really don't remember.

9 Q. Okay.

10 A. I don't.

11 Q. Thank you, Ms. Benjamin.

12 Now, just to go over a few of the things that  
13 Ms. Moseley also went over, and I'm not trying to belabor the  
14 point. Obviously, we're all dealing with the same law, but  
15 certainly at this table we have a different take on it than the  
16 prosecutors do, so if you'll bear with me.

17 As Ms. Moseley said, when somebody is guilty of  
18 capital murder, they have to prove beyond a reasonable doubt  
19 that it was an intentional killing during the course of  
20 another. And in this case, they've alleged a robbery. And you  
21 understand that?

22 A. Yes.

23 Q. Okay. So it's not a situation where it was any kind  
24 of self-defense or an accident or a mistake, because if it was  
25 any of those three, it would be not guilty. Do you understand?

1 A. Yes.

2 Q. Okay. So when we're talking about somebody who is  
3 guilty of capital murder, we're talking about a person who had  
4 the intent to cause someone's death and then took the action to  
5 do so.

6 A. Okay.

7 Q. Okay. Thank you. I know I'm making a lot of  
8 statements. I just want to make sure we're on the same page if  
9 you don't mind.

10 A. No problem.

11 Q. Thank you. And I know -- like Ms. Moseley said,  
12 we've been doing this for about nine weeks. This is our ninth  
13 week, so we've talked to a lot of people, and it runs the gamut  
14 of feelings, honestly, with regard to how people feel about the  
15 death penalty and the law. Some people have come in here and  
16 said, you know what, based on the fact that the District  
17 Attorney's Office has decided to seek the death penalty, based  
18 on the fact that we are now in this process, we've had people  
19 come in and say, you know what, at this point he's got to be  
20 guilty of something. How do you feel about that?

21 A. I wouldn't be able to say that.

22 Q. So you can presume him innocent at this point?

23 A. Absolutely.

24 Q. Even though we're in this process?

25 A. Yes.

1 Q. When you were working in mortgage litigation, did  
2 you ever come across the different burdens of proof that are  
3 applied in cases or -- criminal or civil?

4 A. No.

5 Q. Okay. I just wanted to go over them briefly with  
6 you. In a civil case, like a mortgage default, where people  
7 are really arguing about money or property or something, the  
8 plaintiff in the case has to prove merely by a preponderance of  
9 the evidence what their case is in order to win, so that's  
10 really just 51 percent, more likely than not. So that's  
11 preponderance of the evidence.

12 The next level is clear and convincing evidence.  
13 For example, if the State of Texas was going to commit you to a  
14 mental institution without your permission or if the State of  
15 Texas was going to take your children away and terminate your  
16 parental rights, you would expect them -- I mean, if they're  
17 going to take your children away forever, you would expect them  
18 to have a significant amount of evidence in that kind of case,  
19 wouldn't you?

20 A. Yes.

21 Q. Okay. Well, the State of Texas only has to prove  
22 that by clear and convincing evidence.

23 Beyond a reasonable doubt is the highest burden.  
24 It's not beyond a shadow of a doubt. It's not beyond all  
25 possible doubt, but it's beyond all reasonable doubt. And we

1 all think basically the reason it's the highest burden is  
2 because we're dealing with people's lives and liberty. Does  
3 that make sense?

4 A. Yes.

5 Q. Okay. So when the State said that they had the  
6 burden of proof, they absolutely do and they have that burden  
7 beyond all reasonable doubt in each criminal case. And you  
8 could hold that -- hold them to that burden, can't you?

9 A. Yes.

10 Q. Okay. Now, since the last criminal trial, or the  
11 only criminal trial that you served on was a DWI, when you're  
12 dealing with a murder or capital murder case, we anticipate  
13 that some of the evidence may or may not be an autopsy report  
14 of the victim and/or photographs of an autopsy, crime scene  
15 photographs, other things that, you know, like you see on  
16 dramatic television, things that might be gruesome. Can you --  
17 can you base your decision in this case on the facts and the  
18 evidence and not any kind of knee jerk emotion you might have  
19 to seeing some evidence if it's gruesome or disturbing?

20 A. Yes.

21 Q. Now, with regard to Special Issue Number 1, some of  
22 the people we've talked to have come in and told us that, you  
23 know, if they found somebody guilty of capital murder, meaning  
24 the intentional killing of someone during the course of a  
25 robbery, that when looking at Special Issue Number 1, they're

1 always going to find that there's a probability that the  
2 Defendant would commit criminal acts of violence that would  
3 constitute a continuing threat to society automatically because  
4 capital murder is such a heinous crime. Do you feel the same  
5 way?

6 A. Repeat that, please.

7 Q. Yes, ma'am. We have had jurors come in and tell us  
8 that, you know, if they were on a jury and they found a  
9 defendant guilty of capital murder, the intentional murder of a  
10 victim during the course of a robbery, that when get -- when  
11 then moving to Special Issue Number 1, for them, they would  
12 automatically find that there is a probability that the  
13 Defendant would commit criminal acts of violence that would  
14 constitute a continuing threat to society because they found  
15 him guilty of capital murder. Do you feel the same way?

16 A. I would say yes.

17 Q. Now, even though in Special Issue Number 1 you  
18 understand the burden of proof is on the State to prove that to  
19 you beyond a reasonable doubt?

20 A. I do understand that.

21 Q. Okay. I just wanted to make sure. But for you --  
22 and correct me if I'm wrong, I don't want to put words in your  
23 mouth -- but what I hear you saying is that if you convicted  
24 somebody of capital murder, the intentional murder of somebody  
25 during the course of a robbery, you would always automatically

1 answer Special Issue Number 1 yes?

2 A. No. No. I'm sorry.

3 Q. Okay. Tell me how I'm wrong.

4 A. I just misunderstood what you were saying. I won't  
5 automatically make a decision on anything until I know the  
6 facts.

7 Q. Okay. I'm sorry. My cocounsel just reminded me  
8 that I forgot to tell you about the presumption. Let me go  
9 back. When a jury has found somebody guilty of capital murder,  
10 there is a presumption in the law that life without parole is  
11 the appropriate punishment. Can you follow that presumption?

12 A. Yes.

13 Q. Do you agree with that presumption?

14 A. Yes, I guess I could.

15 Q. Okay. So after finding somebody guilty of capital  
16 murder, there's a presumption of life without parole. Then  
17 when you get to Special Issue Number 1, the State has to prove  
18 beyond a reasonable doubt that there is a probability that the  
19 Defendant would commit criminal acts of violence that would  
20 constitute a continuing threat to society. And you could hold  
21 them to that burden?

22 A. Yes.

23 Q. If they didn't prove to you beyond a reasonable  
24 doubt that there was a probability that the Defendant would  
25 commit criminal acts of violence that would constitute a

1 continuing threat to society in the future, would you answer  
2 no?

3 A. I would answer no if they couldn't prove it.

4 Q. Okay. All right. So you could hold them to that  
5 burden?

6 A. Yes.

7 Q. Now -- and just bear with me. In taking a look at  
8 Special Issue Number 1, I know Ms. Moseley went over, you know,  
9 probability is just more likely than not. I just kind of want  
10 to break down the -- the question -- or statement, rather --  
11 that the Defendant would commit criminal acts of violence. You  
12 can see that acts is plural?

13 A. Yes.

14 Q. Okay. Which leads me to believe that they mean more  
15 than one. Would you agree?

16 A. I would.

17 Q. Criminal acts of violence that would constitute a  
18 continuing threat to society. So it's kind of like three  
19 parts. There's a probability that the Defendant would commit  
20 criminal acts, meaning more than one, of violence that would  
21 actually, you know, constitute a continuing threat to society.  
22 Does that make sense?

23 A. Yes.

24 Q. Okay. So it would have to reach that level of  
25 constituting a continuing threat to society. Does that sound



1 right?

2 A. I understand what you're saying, yes.

3 Q. Okay. And if -- if a jury answers Special Issue  
4 Number 1 no, then it's done. So life without parole. And when  
5 we say life without parole, it truly is life without parole.  
6 No chance of parole ever, ever. I just want to make sure you  
7 understand that, too. It's not --

8 A. I do. Thank you.

9 Q. But if a jury answers Special Issue Number 1 yes,  
10 you move on to Special Issue Number 2. And this is one where I  
11 disagree with Ms. Moseley with regard to, you know, about your  
12 personal beliefs and feelings because it certainly comes into  
13 play with Special Issue Number 2, whether in taking into  
14 consideration all of the evidence, including the circumstances  
15 of the offense, the Defendant's character and background, and  
16 the personal moral culpability of the Defendant, that there is  
17 sufficient mitigating circumstance or circumstances to warrant  
18 that a sentence of life imprisonment without parole, rather  
19 than a death sentence, be imposed.

20 Okay. So what -- and I think we can only -- ask  
21 you to take a look at all the evidence that's been presented.  
22 But in Special Issue Number 2, the jury does not have to be  
23 unanimous. And what I mean is this. For example, if you -- if  
24 there was some evidence that a person -- the Defendant had --  
25 had a horrible drug problem throughout his life and was under

1 the influence of drugs or alcohol at the time of the offense,  
2 some of the jurors may find that mitigating. Some may find it  
3 not mitigating. Some -- that other set of the jury may find  
4 that because he had a rough childhood, to them that's  
5 mitigating. Do you understand what I mean?

6 A. I do.

7 Q. Okay. So the jury doesn't have to be unanimous with  
8 regard to what they think is mitigating, just that something  
9 is. And another juror may say, you know what, I can't really  
10 articulate or explain what it is I find mitigating. I just do.  
11 Could you see how somebody might feel that way?

12 A. Yes.

13 Q. Okay. And certainly you would agree that different  
14 opinions are -- are worthy of respect?

15 A. Absolutely.

16 Q. Absolutely. And now comes the big question.  
17 Because at the point you're looking at Special Issue Number  
18 2 -- and like I've said, we've talked to a lot of people.  
19 There have been people who have come in and said, you know  
20 what, if I found somebody guilty of capital murder, the  
21 intentional murder of a person during the course of a robbery,  
22 and it's been proven to me that there is a probability that the  
23 Defendant would commit criminal acts of violence that would  
24 constitute a continuing threat to society in the future, some  
25 people tell us at that point, when answering Special Issue

1 Number 2, they're always going to answer it no, there is  
2 nothing sufficiently mitigating because they are dealing with  
3 somebody who committed an awful crime who is what they consider  
4 a future danger. How do you feel about that?

5 A. I can't say that.

6 Q. Okay.

7 A. I agree with that.

8 COURT REPORTER: I'm sorry?

9 A. I can't say that I agree with that necessarily.

10 Q. (BY MS. MULDER) Okay. Can you explain a little  
11 more how you feel?

12 A. I really can't. I don't. I don't know how to  
13 explain it to you, but you just can't say that I would agree  
14 with that necessarily.

15 Q. Okay. Well, let me ask it this way. If you were on  
16 a hypothetical jury, you found somebody guilty of capital  
17 murder, the intentional murder of a victim during the course of  
18 a robbery and the State proved to you beyond a reasonable doubt  
19 that there is a probability that the Defendant would commit  
20 criminal acts of violence that would constitute a continuing  
21 threat to society, could you seriously consider Special Issue  
22 Number 2 and answer it yes if you found something that was  
23 sufficiently mitigating? Despite the fact that you had  
24 somebody here who had committed this crime and you -- had been  
25 proven to be a future danger?

1 A. I can't be certain.

2 Q. Okay. And why can't you be certain?

3 A. I really -- I really don't know. I'm going to be  
4 honest with you, I don't.

5 Q. Well, do you feel like it's an issue of because if  
6 somebody was guilty of a capital murder and was a future  
7 danger, that you couldn't -- you couldn't imagine any kind of  
8 circumstance that would be sufficiently mitigating?

9 A. No, I'm not saying that.

10 Q. Oh, okay. I'm sorry. I'm just trying to -- I'm  
11 just trying to figure out a little bit of where your -- of how  
12 you feel.

13 A. I really don't -- I really can't answer that. I'm  
14 sorry.

15 Q. Uh-huh.

16 A. I don't know.

17 Q. Okay. Well -- and I hear you say, I don't know. Is  
18 there -- well, hmm, I don't know how else to really ask it.

19 Is there -- okay. Thank you. Okay.

20 Can you fairly consider a life sentence for  
21 somebody who has been found guilty of capital murder and has  
22 found to be a future danger?

23 A. Yes. I could consider it, yes.

24 Q. Okay. Well, could you consider and give it if you  
25 thought it was appropriate?

1 A. Yes.

2 Q. So you can fairly consider all the evidence in  
3 Special Issue Number 2?

4 A. Yes.

5 Q. Okay.

6 MS. MULDER: Just give me a minute, ma'am.  
7 Thank you.

8 Q. (BY MS. MULDER) Ms. Benjamin, do you know anybody  
9 who works in the Dallas Police Department?

10 A. No, I don't.

11 Q. How about the Garland Police Department?

12 A. Not to my knowledge, I don't know anybody.

13 Q. Okay. How about any of the Garland Fire Department  
14 or the Dallas Fire Department?

15 A. No.

16 Q. The Dallas District Attorney's Office?

17 A. No.

18 Q. Anybody at the Southwestern Institute of Forensic  
19 Sciences?

20 A. Oh, Lord, I don't know. I'm sorry. I don't know.

21 Q. All right. How about the Dallas Sheriff's Office?

22 A. No, I don't know anybody.

23 Q. Okay. How about anybody that works in the -- I've  
24 got a list I've got to go through, so just bear with me.

25 A. Okay.

1 Q. Anybody that works in the -- in the Texas  
2 penitentiary system?

3 A. Not personally, I don't know anybody.

4 Q. Anybody who works at Parkland Hospital?

5 A. No.

6 Q. Anybody at Presbyterian Hospital?

7 A. I -- I don't know anyone, no.

8 Q. Okay. All right. I'm going to read a list of names  
9 to you. If at any time any of them sound familiar, just tell  
10 me to stop; otherwise, I'll just -- it's a long list, so I'll  
11 just read through them.

12 A. Okay.

13 Q. Okay. Here we go. Scott Harris, Elizabeth Harris,  
14 Nancy Harris, Chris Harris, Kenneth Marecle, Amy Marecle,  
15 Michael Frank, Anna Lunceford, Jim Medley, Lawrence Denson,  
16 Jonas Lucht, Greg Mansell, Carina Pinzon, Digna Salmeron, Kelly  
17 Keeton, Daphne Johnson, Sherry Ann Clark, Amy Armstrong,  
18 Anthony Johnson, Alma Johnson, Courtney Johnson, David  
19 Williams, Danny Mullins, David Contente, Gioconda Verdaguer,  
20 Donald Dunlap, Johnny Wright, Monica Cajas, Michael Crosby,  
21 Roxanne Luttrell, Robbie Denmark, Quinlen Minor, Margaret  
22 Tatum, Jim Bertucci, John Harris, Dr. Timothy Proctor, Carlton  
23 Jenkins, Durian Allen, Gene Gathright, Manuel Turner, Andre  
24 Howard, Kenneth Lewis, Sheldon Henry.

25 A. No, no knowledge of those people.

1 Q. Do you have any questions for -- for me or for the  
2 Defense?

3 A. No, I don't.

4 Q. There is just one other thing I just wanted to make  
5 sure we were on the same page with regard to the Defendant's  
6 right not to testify. You can follow the Judge's instruction  
7 and not consider or hold it against him in any way if he  
8 chooses not to testify in guilt/innocence or in the punishment  
9 phase?

10 A. That's a right that we all have.

11 Q. Okay. Thank you very much.

12 A. Thank you.

13 THE COURT: All right. Thank you, Ms. Benjamin.  
14 We're going to take a short recess. If you'll just step out in  
15 the hall for just a moment.

16 VENIREPERSON: Okay.

17 (Venireperson excused to hallway.)

18 THE COURT: Ms. Wanda Benjamin, 1369A, any  
19 challenges for cause from the State?

20 MS. MOSELEY: Your Honor, I'm going to challenge  
21 this juror. I think at a minimum she was vacillating on  
22 whether or not this is a process she could participate in. She  
23 wasn't able to assure us that she could participate in a case  
24 that resulted in a death case without it doing some harm to her  
25 conscience. And frankly, I'm concerned that she's not going to

1 be able to participate. And based on her answers, I would  
2 submit her for cause.

3 (Venireperson challenged by the State.)

4 MS. MULDER: Your Honor, our response is that  
5 according to case law, if it violated her conscience, is not  
6 the standard. The standard is would it prevent or  
7 substantially impair her ability to answer the -- either of the  
8 two special issue questions. And -- and she said repeatedly  
9 that she could follow the law and that she could do it, and  
10 that does make her qualified.

11 THE COURT: All right. The request is denied.  
12 I think that the witness did say numerous times, with great  
13 reluctance, that she could do it.

14 (Challenge denied.)

15 (Venireperson returned to courtroom.)

16 THE COURT: Ms. Benjamin, you have been  
17 qualified as a juror. So we will be taking your photograph, if  
18 you don't mind, so the lawyers, when they're reviewing their  
19 notes, can put a face to your name. And then we will be  
20 calling you on October the 15th to let you know if you are, in  
21 fact, one of the jurors.

22 Thank you very much.

23 (Venireperson 1369A, Wanda Benjamin, qualified.)

24 (Venireperson excused from courtroom.)

25 THE COURT: Are we off the record?



1 MS. MOSELEY: I don't need it on the record.

2 THE COURT: Anything on the record?

3 MS. BERNHARD: Nothing.

4 THE COURT: Close the record.

5 (Recess of proceedings.)

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1 Reporter's Certificate

2 THE STATE OF TEXAS:

3 COUNTY OF DALLAS:

4 I, Darline King LaBar, Official Court Reporter in and for  
5 the 363rd District Court of Dallas County, State of Texas, do  
6 hereby certify that the above and foregoing volume constitutes  
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10 above-styled and numbered cause, all of which occurred in open  
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12 I further certify that this Reporter's Record of the  
13 proceedings truly and correctly reflects the exhibits, if any,  
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15 WITNESS MY OFFICIAL HAND this the Reporter's Certificate  
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